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THE LOUISIANA HISTORICAL QUARTERLY

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HISTORICAL QUARTERLY

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COMMODORE AURY

By STANLEY FAYE

CHAPTER I: CARTAGENA DE INDIAS

French privateer schooners came to New Orleans in the spring of 1810 exiled by a British squadron that had captured the French West Indies. One little vessel brought as its lieutenant and part owner a broad-shouldered young man of medium stature who called himself Louis-Michel Aury.

Among this privateersman's letters once cherished by his sister Victoire in Paris a pencilled portrait is preserved without a name. The face looking out from the paper is the face of Louis Aury as a later companion would describe it. A serious young face this was, under black hair parted in the middle and smoothly brushed to hang down over the ears, broad of forehead, narrow of chin, notable as to nose, made distinctive most of all by eyebrows arched high above black eyes[1] as if in the spirit of incomprehension that Aury never was to remedy. It was the face of a sailmaker and helmsman[2] aboard a French warship who in the year 1803 had seen West Indian islands for the first time and had written of them to his mother in a boyish hand still unformed. The boy had signed the letter then with his surname only, simply *Aury*, for the death of his father long since had made him the head of his house. He had left his widowed mother and his little sister living near to his uncle Aury in Montrouge, the Parisian quarter that lies half an hour's walk from the bridge of that Saint-Michel whose name he bore. Not his uncle Aury but his uncle

[1] Mario Longhena, ed., *Memorie Inedite di Agostino Codazzi* (Milan, 1930), 405; portrait in Aury Papers, University of Texas; MS., translated extracts in *Southwestern Historical Quarterly*, XLII, 108-116. Codazzi's narrative is an elaborate hoax.

[2] Charles Francis Adams, ed., *Memoirs of John Quincy Adams* (12 v.; Philadelphia, 1874-1877), IV, 75; Gustave Schlumberger, ed., *Mémoires du Commandant Persat, 1806-1844* (Paris, 1910), 32.

Maignet, whose house in the Rue Lenoir looked across the Place de la Bastille, had provided support for a widow's two growing children.

From the French warship the boy had transferred himself to a French colonial privateer, and then to another and another. Seven years of warfare in little vessels brought him to the age of perhaps twenty-two years, to experience of carnage and of horror, to a lieutenancy aboard one cruiser and to possession of some thousands of dollars in prize money. In New Orleans in the year 1810 Aury found $4,500 at hand for buying and equipping a little schooner of his own. He was about to sail. Then the federal marshal seized his ship. The district court condemned it on a charge that it was prepared in that neutral port as a French privateer. Aury himself assured his Parisian relatives that $2,000 remained to him from this wreck of his fortunes. One of his later subordinates would have it that the money came from the hands of Madame Jack, a woman notorious along the river front of New Orleans.[3] Two thousand dollars bought for Aury a share in another vessel.[4] With hatred of Anglo-Americans in his heart the young man quitted New Orleans forever. Out he sailed with Captain Dominique Diron aboard the schooner *Christianstadt*, a vessel of Swedish registry from St. Bart's. At sea the *Christianstadt* armed herself with artillery. She was the French privateer *Vengeance*.[5]

Captain Diron and Lieutenant Aury aboard the *Vengeance* cruised the Gulf in the latter months of 1810. A visit to Savannah gained them the aid of a commodore, Charles Lominé, whose accession reduced Diron to the status of sailing master. After another six months in the Gulf the *Vengeance* again entered Savannah in July. In September the armed schooner *Franchise* (Captain Jean Chevallier), commissioned as a French naval dispatch boat, ended a summer's cruise by following the *Vengeance* into the 9-foot channel of the Savannah River.[6] Both vessels

[3] Relation of Isaac W. Webb of Albany, N. Y. ("J. M. Hebb" to López, Jan. 12, 1819), annexed to Apodaca to Estado, April [30,] 1819, Archivo General de Indias, Estado, México, Legajo 14.

[4] Aury to Maignet, Feb. 10, 1812, Aury Papers.

[5] *Cf. Louisiana Gazette* (New Orleans), Dec. 29, 1810, Jan. 4, 1811; Baltimore *Federal Republican*, Nov. 19, 1811, Feb. 18, March 6, 1812. New Orleans newspapers cited, are in the Archive Room, City Hall, and the Louisiana Historical Society Library, Pontalba Building, New Orleans; other newspapers, in the University of Chicago General Library and the Newberry Library, Chicago.

[6] *Louisiana Gazette*, Sept. 16, 1811; Baltimore *Federal Republican*, Oct. 22, Nov. 29, 1811.

tied themselves up at Anciaux's wharf. There they began a process of refitting while their officers violated Macon Bill No. 2 and the neutrality of the United States by enlisting men in Savannah and Charleston to enlarge their crews. In Savannah on November 11 Louis Aury could not know that Cartagena de India beyond a distant sea was flaring up into rebellion against what remained there of Spanish royalist government. In Savannah on November 12 took place the first of successive brawls that brought Napoleonic warfare to Georgia. On the fourteenth a mob of Federalists, with the American flag in their hands and the British flag in their esteem, attacked the sailors aboard the two French schooners. Half-hearted efforts of three militia companies did not prevent the rioters from carrying the vessels away from their wharf and destroying them by fire.[7]

Dominique Diron retired from French service and a few months later began a career under American commission.[8] Jean Chevallier, lieutenant in the French navy, found means to equip a small ketch for a return to the sea. Charles Lominé was soon reported on the coast as far north as Chesapeake Bay seeking recruits for his new pilot boat built cruiser.[9] Both Lominé and Chevallier had complained to the French legation by way of their vice-consulate in Savannah.[10] Now Louis Aury traveled directly to the legation to complain of odious Americans and the losses they had caused him in New Orleans.[11]

The French legation stood ready to give sympathy also to South American republican agents if any such might seek aid of the Napoleonic usurper in their war of liberation against the Bourbon regency of Spain. The United States government gave sympathy but no direct aid to the agents of Buenos Aires, Caracas and Cartagena, who for two years past had been active in Baltimore and Philadelphia. The fall of republican Caracas in the summer of 1812, sending young Colonel Simón Bolívar to adventures in New Granada (modern Colombia), sent the young lawyer Pedro Gual to join other Venezuelan agents in North America.

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[7] *National Intelligencer* (Washington), tri-weekly, Nov. 28, 30, 1811; Baltimore *Federal Republican*, Nov. 29, 1811; New York *Herald*, semi-weekly, Jan. 18, 1812; Aury to Maignet, Feb. 10, 1812, Aury Papers.

[8] George Coggeshall, *A History of American Privateers and Letters of Marque* (New York and London, 1856), 172-175.

[9] Baltimore, *Federal Republican*, Jan. 14, 16, 20, 1812.

[10] Philadelphia *Aurora*, Dec. 6, 1811.

[11] Aury to Maignet, Feb. 10, 1812, Aury Papers.

When the United States declared war against Great Britain in June of 1812 sympathy for French privateersmen added itself to that for South Americans. In August the French privateer brig *Diligent* (Captain Alexis Grassin) captured a British dispatch boat, the 4-gun schooner *Whiting*, and sent her in to Pamlico Sound as a prize.[12] By April of 1813 the *Whiting* in a North Carolina port had equipped herself for new service. Carrying a privateer commission of Cartagena that Dr. Gual certified to a New York court as authentic, but carrying no other papers except her clearance, the *Whiting* dropped down to the Sound. There in territorial waters she violated American neutrality by hoisting the flag of Cartagena and declaring herself to be a patriot privateer. Under command of Louis Aury the schooner sailed out through Okracoke Inlet. When she took a first prize at sea, a North American vessel under temporary Spanish registry, Captain Aury tauntingly named himself to the captured Americans as a French pirate. Southward the privateer schooner cruised to the old Spanish Main. Accompanied by a new Spanish prize, in the month of May she approached the barrier beach of Cartagena. The voice of her artillery called out to the forts that guard the entrance to Cartagena Bay.[13]

On June 9 the government of Cartagena, a member of the Granadine republican federation, gave to Louis Aury a commission as lieutenant senior grade *(teniente de navío)* in the navy of New Granada. On August 10 it deputed to him a commodore's command over the schooners that formed the growing national squadron of the republic.[14] Shares in prize monies came to Louis Aury from the privateer commissions that passed through his hands. The commodore of Cartagena bought and armed three vessels of his own.[15] Even then it might have been said of him that "his name became terrible in those seas, like that of the buccaneers of old."[16]

Far from the sea in the land of New Granada royalist troops held the southern mountains. From Santa Fé de Bogotá to the Caribbean coasts republicans had created provincial republics and

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[12] *Columbian Centinel* (Boston), Sept. 19, Oct. 12, 1812.

[13] *New York Reports*, 14 Johnson 273, Hallett vs. Novion.

[14] List of authorities given to Aury, annexed to Vicente Pazos Silva's memorial, in *State Papers and Publick Documents* (12 v.; Boston, 1819), XII, 424-425.

[15] Aury to Maignet, Oct. 24, 1814, Aury Papers.

[16] José Manuel Restrepo, *Historia de la Revolución de la República de Colombia* (4 v.; Besançon, 1858), I, 461.

bound them in a federation into which Bogotá, however, refused to enter. When the one new republic that was Venezuela met disaster in the year 1812 some of her leaders went like Dr. Gual to the United States; others fled to Cartagena like Colonel Bolívar. From Cartagena, as an officer now of New Granada, this refugee led a little Granadine army across the Venezuelan Andes and in the summer of 1813 set free his native town, Caracas. Enthusiastic Venezuelans joined the army of General Bolívar. Luis Brión of Curaçao, colonial son of a Jewish father[17] from Flanders, came to command a Venezuelan squadron on the sea with the rank of captain junior grade *(capitán de fragata)*.[18] Driven again from Venezuela by royalist forces General Bolívar returned in September of 1814 to the land where Louis Aury flourished as commodore. At the head of his army the Venezuelan marched against Bogotá and brought reluctant highlands into the Granadine federation. New Granada gave him the title of "Liberator." In and out of Cartagena Captain Brión served New Granada as he had served Venezuela, bringing arms and munitions from foreign ports and sending his own armed vessels to raid the commerce of Spain.

In Cartagena two political parties contended, presenting on a small scale the division of theory that during three years had held Bogotá aloof from the federation. The people's party of Cartagena had driven out the royalists in the revolution of 1811, but the upper-class party had taken and retained control of the new government. This party had induced foreigners to come to Cartagena's aid, whether as military officers or as privateersmen.[19] When the legislature of Cartagena assembled on October 1, 1814, to elect new executives the people's party thought to control the town and therefore the election through its control of the town guard. The party in power created a superior armed force of its own by calling upon Captain Charles Lominé with Haitian sailors from Commodore Aury's privateers. The upper-class officers won reëlection.[20] A grateful government rewarded the privateersmen by two favorable decrees in admiralty.[21]

[17] Washington *Gazette*, Oct. 18, 1821.

[18] Restrepo, *op. cit.*, II, 334; Vicente Lecuna, *Expedición de los Cayos* (Pamphlet, Caracas, 1928, reprinted from *Cultura Venezolana*, No. 86, January-March, 1928), 33-34. A revised edition of this study appeared in 1937 in *Boletín de la Academia Nacional de la Historia* (Caracas).

[19] Restrepo, *op. cit.*, I, 185.

[20] Louis Ducoudray (Henry La Fayette Villaumé Ducoudray Holstein, *pseud.*), *Memoirs of Simon Bolivar* (Boston, 1829), 76-82.

[21] Manuel Ezequiel Corrales, ed., *Documentos para la Historia de la Provincia de Cartagena* (2 v.; Bogotá, 1883), I, 663-664.

Two months later another election put the people's party into power. The ousted leaders soon won control of the town guard and gained from the legislature the appointment of a non-partisan umpire, the Venezuelan Dr. Gual, only recently returned from the United States. Disorder in the town did not cease. In January of 1815 Dr. Gual brought within the walls the Cartagenan army, to which neither party previously had dared appeal. With soldiers policing the streets the legislature elected an upper-class governor to rule Cartagena as a state in a new centralized republic that the people's party opposed as firmly as Bogotá had opposed the old federation. The governor ruled in name, but the army bided within the walls.[22]

Now the new union government in the highlands commissioned General Bolívar to lead his army of Venezuelans and Granadinos to another liberation of Venezuela. It directed the city of Cartagena to equip these forces with arms and supplies, since its own shipment of muskets and ammunition, ordered from England, could not be expected for another six months.[23] General Bolívar descended the Magdalena River and sent the union order to Cartagena. Cartagena refused to honor it. Behind the embarrassed governor stood the military commander of Cartagena, Colonel Manuel del Castillo, a personal enemy of General Bolívar, opposed as strongly as he had been in 1813 to any Granadine adventure across the Andes.[24] On March 27 came General Bolívar with an army and one field gun to reduce the fortifications that in earlier days had withstood the naval and military strength of England. The Cartagenan Juan Marimón, Granadine congressional commissioner in Cartagena, ordered him away, but in vain. Yet the expected war of factions did not declare itself within the city. Six weeks later General Bolívar signed a treaty with his personal enemy and sailed for Jamaica.

The treaty was signed upon receipt of news that the royalist General Morillo had come to Venezuela with a fleet enormously superior to Commodore Aury's squadron and with an army of enormous size. At Cartagena in July, six months too late for General Bolívar, arrived the former American ship *General Gates*, now the *Dardo* of British registry.[25] The *Dardo* brought the

[22] Restrepo, *op. cit.*, I, 283-286, 303-305; Corrales, *op. cit.*, II, 187.
[23] Restrepo, *op. cit.*, I, 273.
[24] Corrales, *op. cit.*, II, 182; Ducoudray, *op. cit.*, 39-40.
[25] For the identity of the *Dardo* *cf. National Intelligencer*, t-w., July 14, 1812; New York *Gazette*, Sept. 12, in *Kentucky Gazette* (Lexington), Oct. 2, 1815.

cargo of arms that New Granada had exported from England. She brought the Granadine purchasing agent. She brought the owner of the ship, Luis Brión, still cherishing his republican commission as captain junior grade. Two weeks later General Morillo's fleet established a half effective blockade of the Cartagena coast.

The walled city of Cartagena, a mighty citadel, looks westward across the Caribbean toward the Isthmuses from its site on one of several long, narrow islands or barrier beaches. Beyond the blocked up channel of Boca Grande, which delimits the city on the south, the island of Tierra Bomba stretches eight miles southward between the shallow Cartagena Bay and the sea to Boca Chica, the fortified entrance. Beyond Boca Chica the island of Barú continues southward between the sea and the bay called the Estero, which communicates with Cartagena Bay through a mangrove swamp and the shallow northward channel called Pasa Caballos. Along the inner shore of Tierra Bomba lies the only channel through which vessels may pass from Boca Chica to the city.

An unseaworthy Spanish frigate took shelter in the Estero. Under orders from the landsman naval secretary of Cartagena (and therefore from the landsman military dictator) Commodore Aury led an expedition in September to attack the ship. Not the official royalist report of that affair, but a partisan republican narrative, puts upon Louis Aury the blame for failure of the venture. Another partisan narrative blames Aury even for the loss of the city.[26]

Light-draft royalist gunboats from the Estero tried now to penetrate Pasa Caballos and enter Cartagena Bay. As late as October 3 the republican vessels contested the royalist advance from the mangrove swamp.[27] Then Aury's supply of gunpowder came to an end. The patriot commanders of Boca Chica (a Dane, a Pole and a European Spaniard) had no powder to spare, but beneath their guns hung the ship *Dardo* laden with arms and supplies that Captain Brión had brought not for rebellious Cargena but for the union of New Granada and for his Venezuelan friend the Liberator. Brión deafened his ears to Aury's plea for help. He refused to cross the inner bar with his ship and her

[26] Restrepo, *op. cit.*, I, 360; Corrales, *op. cit.*, II, 121, 236-237. The second passage cited from Corrales is based on the first edition (Paris, 1827) of Restrepo's *Historia*.

[27] *Gazeta de México*, Feb. 17, 1816; Restrepo, *op. cit.*, I, 356.

neutral flag. He refused even to lend the 4,000 pounds of gunpowder that Aury asked for the salvation of Cartagena. He offered to his commodore nothing but advice. The royalist gunboats entered the bay. They advanced to form themselves into floating batteries along the inner shore of Tierra Bomba. Aury's more lightly armed squadron retreated before them to a position near the city.[28]

Within the citadel Colonel del Castillo had taken precautions against besieging Spaniards and also against the union army, which General Bolívar had left behind him. This latter force Castillo had relegated to the Popa hill beyond the town. José Francisco Bermúdez, a Venezuelan but no friend of General Bolívar, succeeded the Liberator in command. Holding command within the city walls second to that of Castillo was Lieutenant-Colonel Mariano Montilla, likewise a Venezuelan and likewise a personal enemy of the departed Liberator. The disaster of Pasa Caballos, casting Cartagena into mortal danger, caused all factionists to unite for the common good. Under leadership of the foreigners, Montilla within the walls, Bermúdez on his hill, the Danish and Polish and Spanish commanders of Boca Chica, the Jewish Curaçaoan who commanded the *Dardo*, the Parisian commodore of vessels at anchor just below the city, conspiracy arose against the military commander who had defied the union government and refused aid to General Bolívar.

Colonel del Castillo became aware of unrest in the city, but he feared only the union army. On October 8 he cut communication between the citadel and the height of the Popa but welcomed the reïnforcements that before morning arrived from Boca Chica. Then revolution revealed itself. Louis Aury in the dawn raised the cry in city streets. Castillo fell prisoner to those whom he had thought his servants. Soldiers from the Popa hill joined those who previously had crept into the citadel. A committee of public safety, in sympathy with the liberated governor, appointed Bermúdez to military command in succession to the imprisoned dictator.[29] Dr. Marimón, commissioner of the union government resident in Cartagena, promoted Commodore Aury to the rank of

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[28] Memorial, Aury Papers (*Southwestern Historical Quarterly*, XLII, 113).

[29] Ducoudray, *op. cit.*, 119-120; Restrepo, *op. cit.*, I, 361; *Louisiana Gazette*, Jan. 20, 1816. Restrepo, who was not present, gives the dates as Oct. 16-17, 1815. The letter reprinted by the *Louisiana Gazette* from an unnamed Philadelphia newspaper of Dec. 20, 1815, appears to be the work of Luis Brión.

captain senior grade (*capitán de navío*),[30] the highest Granadine naval rank below the nonexistent rank of admiral.

Dr. Gual had departed for Philadelphia nine months since, but Cartagena in his absence had won now the agreement of factions that he had sought to create by bringing soldiers into the city. Union had come too late. The Spanish fleet at sea and the Spanish army on the farther shore of the bay ringed the city about with a cordon that supplies for the republicans seldom could pierce. It would be too long to wait until malaria and yellow fever should lay the Spaniards low. In the month of October Cartagena saw starvation approach. On November 11 Captain Brión gave up hope; with his *Dardo* and three of his privateer schooners he stole out through the imperfect blockade to deposit his cargo in care of the Haitian republic. Aboard the privateer *Popa* certain leaders of Cartagena sent a letter begging General Bolívar to come back from Jamaica to lead them again from peril.[31]

Thirteen vessels in all, naval schooners, privateer schooners, merchant schooners, one brig, one sloop and one falouche, assembled on December 5 beneath the guns of the citadel. More than 2,000 passengers found places on board. Next day Commodore Aury led his refugee fleet down the bay past anchored royalist gunboats and the batteries of Tierra Bomba. Enemy fire wrought little injury to the vessels, which came to safety beneath the guns of Boca Chica. There the last of the defenders and the last of their scanty provisions were embarked. Barely enough water was stowed for the one week's voyage in prospect. At two o'clock next morning the refugees set out to sea. Haiti was their destination, and republican Negroes their only friends.[32]

The evening breeze had become a strong wind. Less seaworthy royalist ships had retired from the blockade. Among those that remained on guard Louis Aury's fleet ventured with caution and gained the open waters. Before dawn the wind had increased to a gale from out of the northeast. It scattered the

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[30] Marimón to Marion, Jan. 27, 1816, in Daniel Florencio O'Leary, ed., *Memorias del General O'Leary* (29 v.; Caracas, 1879-1888), XV, 47, in *Boletín de Historia y Antigüedades* (Bogotá), VII, 344.

[31] Restrepo, *op. cit.*, I, 305, Ducoudray, *op. cit.*, 119-120.

[32] Restrepo and Aury agree on the afternoon of Dec. 5 as the time of evacuation, and Aury gives no further data. Restrepo and a surrendering Negro boy say that the descent of the bay was made the afternoon of Dec. 6. Restrepo says that the squadron sailed from Boca Chica next morning. Ducoudray says the squadron sailed at 2 A. M., Dec. 8. Only Aury, in speaking of "fourteen vessels," makes even a reference to the second squadron that sailed from Boca Chica following the squadron of thirteen under Aury's command. With Corrales, *op. cit.*, II, 251, *cf.* same, II, 291-293; Amador to Garcia del Fierro, Kingston, Jan. 5, Feb. 11, in Philadelphia *Weekly Aurora*, April 23, 1816.

vessels of Cartagena and drove them from their northeasterly course. A sloop and a schooner that carried 300 souls met capture on the coast. One schooner set herself ashore. A later storm destroyed a fourth vessel within sight of a welcoming land. On went the others, driven again from their course by gales, halted again and again by the failure of all wind. Provisions ran shorter than ever. The daily ration was reduced. Not enough rainwater could be caught to refill the barrels in the holds.

Among the refugees crowded aboard each little vessel two passengers traveled unseen. Hunger and thirst trod the deck during storm after storm and through the heat of intolerable calms. Then it was known that the unseen intruders had become three in number. Hunger, thirst and death manned Louis Aury's scattered fleet as, one by one and two by two, little vessels made landfall here and there on West Indian islands. Aury's flagship *Constitución* touched at Jamaica for supplies but was nevertheless the first to enter the roadstead of Aux Cayes. Aboard the flagship alone Commodore Aury counted forty-five persons who had died of hunger, thirst and exhaustion. When the last of the fugitives reached Aux Cayes in late January only a few hundred out of more than two thousand passengers survived to undertake anew the liberation of a continent.[33]

Chapter II: Aux Cayes de Saint-Domingue

Alexandre Pétion, in the year 1805 mulatto commander of a little Haitian army, desperately held the region of Port-au-Prince against the hordes of Dessalines. Jacob Lewis, commanding a merchant ship from New York, promised Pétion and his troops that "if he could find them a country where they might go to live they would be carried there all in a body." At the end of the year Lewis sailed again from New York, now commodore of General Miranda's expedition to liberate Venezuela, and he bore Miranda's offer of a Venezuelan refuge for defenders of Port-au-Prince.[1] Pétion survived the threat of Dessalines. In after years this first president of the Haitian republic offered

[33] Aury to Maignet, March 15, 1816, Aury Papers; Philadelphia *Weekly Aurora*, April 23, 1816; Corrales, *op. cit.*, II, 172, 184-185, 291-293; Restrepo, *op. cit.*, I, 378-384; Lecuna, *op. cit.*, 23-24.

[1] Irujo to the captain-general of Venezuela, Feb. 4, annexed to Irujo to Someruelos, Feb. 4, 1806, Archivo General de Indias, Papeles de Cuba, Legajo 1708. Part of this chapter, translated by Dr. Vicente Lecuna, appeared in the year 1938 in *Boletín de la Academia Nacional de la Historia* (Caracas), XXI, 314-321.

friendship to insurgents of the continent.[2] The special debt of gratitude that he owed to General Miranda's good will he repaid in the year 1816 to another Venezuelan, General Bolívar.

Luis Brión's munitions ship *Dardo,* laden with arms brought for General Bolívar and New Granada, sailed from Cartagena on November 11, 1815. Safely anchored at Aux Cayes de Saint-Domingue, the southern port of Haiti, Brión transferred to a republican arsenal the *Dardo's* cargo, including the 4,000 pounds of gunpowder that Commodore Aury had needed for Pasa Caballos.[3] In the early days of the new year General Bolívar arrived from Jamaica and went on to Port-au-Prince. The first refugee vessel from Cartagena, Commodore Aury's flagship *Constitución,* appeared at Aux Cayes on January 6.[4] Others soon followed.

Starving came the refugees; the Haitians fed them. Almost penniless they came to begin an expedition against royalist enemies, but in the arsenal lay Luis Brión's Granadine cargo valuable far in excess of their needs for money. A favorable market awaited them. Prime quality European muskets such as the 15,000 that the *Dardo* had carried would yield a profit if sold at ten dollars each in Aux Cayes or any other American port.[5] Insurgents in Mexico stood ready with cash in hand to buy thousands of muskets at twenty or even thirty dollars delivered on the republican coast of Vera Cruz.[6] Mexican republican agents already were presenting their credentials in Port-au-Prince.[7] Despite a warning received from General Morillo, the royalist victor of Cartagena,[8] President Pétion ordered on January 25 the release of 2,000 Granadine muskets from the arsenal of Aux Cayes.[9] The privateer *Popa* sold these arms on the Mexican coast before going northward to refit in April at New Bern, North Carolina.[10]

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[2] Héctor García Chuecos, *Estudios de Historia Colonial Venezolana* (2 v.; Caracas, 1937-1938), II, 114-144; Harris Gaylord Warren, "Toledo's Reconciliation with Spain", in *Louisiana Historical Quarterly,* XXIII (1940), 827-863.

[3] *Cf.* Pedro Torres Lanzas, ed., *Independencia de América, primera serie* (5 v. and index volume; Madrid, 1912), IV, 149 (4951); Felipe Larrazábal, *Vida y correspondencia general del Libertador Simón Bolívar* (2 v.; New York, 1883), I, 411.

[4] Larrazábal, *op. cit.,* I, 409.

[5] Fatio to Cienfuegos, May 31, 1817, AGI, PdeC, Legajo 1900.

[6] Lucas Alamán, *Historia de Méjico* (5 v.: Mexico, 1849-1852), IV, 429; Morphy to Apodaca, Nov. 20, 1815, AGI, PdeC, Legajo 1836.

[7] Memorial, Aury Papers.

[8] García Chuecos, *op. cit.,* II, 115; Torres Lanzas, *op. cit.,* IV, Nos. 4946, 4989.

[9] Larrazábal, *op. cit.,* I, 411.

[10] Juan F. Hernández y Dávalos, ed., *Colección de Documentos para la Historia de la Guerra de Independencia de México de 1808 a 1821* (6 v.; Mexico, 1877-1881), VI, 908; Onis to the captain-general, Aug. 3, 1816, AGI, PdeC, Legajo 1898.

Assured of funds for the future, the refugees considered what else the future might hold for them. General Bolívar in Port-au-Prince had enlisted the sympathy of President Pétion for an expedition against royalists of Venezuela. Commodore Aury in Aux Cayes argued toward occupying the Granadine island of Old Providence as a Caribbean port for privateers and as a base for naval and military operations against the coast of Cartagena.[11] The enmity that Cartagenans, and some Venezuelan officers, cherished against the Venezuelan General Bolívar threatened to prevent agreement on one project. Into a conflict of interests stepped General Cadenas, the principal Mexican agent in Haiti. Cadenas invited Aury and his friends to undertake operations with their own vessels against the royalist coast of Mexico. He promised them insurgent aid and money and an army of adventurers from Louisiana. His proposal offered to the Cartagenans at once a weapon in their struggle with the Venezuelan leader and a means of escape if their own party among the refugees should fail of success. Aury and his friends accepted, conditionally and in secret.[12]

The continental difference of interests in Aux Cayes resolved itself into a sequence of quarrels resulting in duels, or rather challenges,[13] which General Bolívar might well recognize as further endangering union and his proposed expedition. Yet among the leaders decrying the Venezuelan project all except Aury received the Liberator's forgiveness. Colonel Montilla (not present at the moment) and General Bermúdez became in time generals in the liberating armies. The Granadine civil officer Francisco Antonio Zéa, even the Venezuelan Rafael Diego Mérida, "in whose veins coursed poison and whose mind was the abode of Satan,"[14] gained the favor of the Venezuelan chief. Only toward Aury did the Liberator remain forever unreconciled; for only Aury had won the fear and the hatred of a powerful rival, who was General Bolívar's friend Luis Brión.

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[11] Aury to Santander, July 12, 1820, in *Boletín de Historia y Antigüedades*, VII, 361. The Aury-Santander correspondence of July-September, 1820 (duplicate originals in Archivo Nacional de Bogotá, Guerra, CCCXXV, 670 ff.), was transcribed from the *principales* by O'Leary, *op. cit.*, XVII, 409-420.

[12] Relation of José Manuel de Herrera, second annex to Apodaca to Hacienda, June 26, 1818, No. 444 *reservado*, AGI, Audiencia, México, 90-2-9; speech of Aury, Dec. 12, 1817, in Charleston *Courier*, Jan. 9, in New York *Advertiser*, s-w., Jan. 20, 1818; Larrazábal, *op. cit.*, I, 417.

[13] Ducoudray, *op. cit.*, 126-127, 134-135.

[14] Vicente Lecuna, ed., *Cartas del Libertador* (10 v.; Caracas, 1929-1930), X, 411.

Commodore Aury was aware of the storm that blew about him, but he could not estimate what significance it held. Using his own credit he proceeded to outfit the two privateers of his own in the harbor and the two state vessels remaining from among those that had transported refugees. So passed the month of January. The future of a continent hung balanced by the weight of personal grievances. It became more and more apparent that only the hand of Simón Bolívar might tip the scales in favor of South America. A conference of refugees was called in the first week of February.

General Bolívar's promise of freedom for all slaves in Venezuelan provinces assured him continuance of sympathy from the Republic of Haiti. The Liberator could count on the devotion of Luis Brión, of the Scottish adventurer Gregor MacGregor (later his relation by marriage) and of his own Venezulan officers. Personal enemies, Cartagenans and Venezuelans both, arrayed themselves against him as he sat solitary upon a dais, a slender, hot-eyed, dark-skinned man of thirty-two years, his thin face vivid even in repose. Little thought persisted now in the minds of many that the meeting would oppose the Liberator's plan of a descent upon the Venezuelan coast. It remained to be decided who should be the military and the naval commanders of the expedition. For the naval command two candidates existed. They were Luis Brión and Louis Aury.

Aury was about twenty-eight years of age, brown and sturdy, impressive in appearance rather than handsome. Brión was thirty-three, handsome rather than impressive, short, thick, black of hair and moustaches, with swarthy skin and delicate features marred by smallpox. Aury was a man of the people, a man of moderate education and of slow intelligence, a man of impulse, a conservative Frenchman who learned only by experience. Brión was an educated man, a merchant, a trader, wealthy son of a wealthy father, with the keen understanding that characterizes the Jewish people of western Europe. Aury was honest, logical and dull. Brión, a doctrinaire only in devotion to the Liberator and his cause, was otherwise an opportunist who seized upon the day with a politician's cleverness, though never forbearing with the patience of a politician.

British naval officers in Jamaica regarded Aury as "an active and well meaning man." Of the former British military officers

who became acquainted with Brión it has been said that "few if any of them have been able to write anything but evil of him."[15] Neither aganist Aury nor against any one of Aury's captains could the Spanish consulate of New Orleans ever bring an accusation of atrocity or even of physical ill-treatment offered to any Spanish prisoner. Brión on the sea entered into that policy of "War to the Death" which the acts of subordinates on the continent had forced upon General Bolívar.[16] Aury held the respect of his experienced sailors and the admiration of his officers. Brión for the sake of one friend and that friend's cause was soon to win the hatred of his own men, and already he was beginning a series of quarrels that were to involve all of his principal associates.

Of Aury it was said in after years, "That man had a kind heart, a noble and lofty mind." Of Brión a personal admirer in North America could say only, "He was faithful to his trust from the government."[17] Aury was a son of the French Empire and had supported the centralized union of New Granada, but he was also a loyal son of disloyal Cartagena. Brión, serving his friend Bolívar, had served Venezuela and the Granadine union and had helped the folly of Cartagena work the ruin of New Granada. Aury had spent his own funds to bring food for starving fellow citizens and was blamed for not having spent more; he had led the refugee fleet successfully through danger and was blamed because supplies that a starving city had yielded for one week's use had not sufficed for a voyage prolonged by storms and calms. Brión, conserving 4,000 pounds of gunpowder, had performed no services for which Cartagenans, as distinct from other Granadinos, might thank him or blame him.

Aury had commanded as commodore the naval station of Cartagena; during five months past he had held the rank of captain senior grade under the Granadine union, and no higher rank could exist except that of admiral. Brión was a captain junior grade. Aury owned four cruisers (two of them absent just then) and also two cargo vessels capable of bearing arms,

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[15] London *Chronicle*, March 26, 1819; Alfred Hasbrouck, *Foreign Legionaries in the Liberation of Spanish South America* (New York, 1928), 362.

[16] London *Courier*, Aug. 7, 1818; New York *Evening Post*, s-w., Dec. 2, 1818; Corrales, *op. cit.*, II, 298; *Recollections of a service of three years during the war of extermination in the republics of Venezuela and Colombia, by an officer of the Colombian navy* (2 v.; London, 1828), I, 43-44. The author of this anonymous work is Captain Cowie, commander in 1818 of Brión's flagship *Victoria*.

[17] Codazzi, *op. cit.*, 405; Washington *Gazette*, Oct. 18, 1821.

and his friends owned two other vessels. In addition to a big topsail schooner under repair in Jamaica the squadron controlled by Brión consisted now of four schooners. The *Dardo,* too large for use in the proposed expedition, had been sold to the republic of Haiti.[18] The refugee government of Cartagena owned the two naval schooners *Constitución* and *Republicano.*

At the beginning of the February conference the choice between Aury and Brión was seen already to have been made. Brión spoke first. He set forth the need of entrusting to one military leader the conduct of the expedition planned against royalists on the continent. For that duty he nominated General Bolívar. Aury responded as a leader of the opposition. Beneath the eyes of that figure remote upon the dais he recommended the civilian executive body of revolutions, a council of three or five persons. He conceded a seat in the council to General Bolívar. Brión in turn fortified his own argument by reminding the auditors that Haitian aid would be granted only to a party ruled by General Bolívar. His guiding doctrine became unmistakable in his assertion that his own resources in vessels and in money would be lent only to such a party. Brión's argument prevailed. Even most of the Liberator's enemies inclined toward the only plan that promised a chance of success. Aury's proposal was rejected. The man upon the dais received acclaim as the supreme commander of the expedition.[19]

Election of General Bolívar to command entailed appointment of Junior-Captain Brión to direct the squadron in place of Senior-Captain Aury, the commodore. From Aury's point of view this appeared outrageous. Aury was willing to forget his sense of injustice and personal injury, but his dignity as a Granadine officer forbade him to accept subordinate rank and duty under a Venezuelan admiral who had held official rank subordinate to his own Granadine rank. Yet Aury's vessels would be perhaps even of vital value to the expedition. In a meeting held later in the day of the election[20] Commodore Aury was brought to offer his services in such a way as to save his dignity.

This meeting was held by Aury and "several officers and prominent personages," among whom were the Granadine com-

[18] New York *Evening Post,* in New York *Advertiser,* s-w., Oct. 3, 1817.

[19] Lecuna, *Expedición de los Cayos,* 28-29. Authors cited by Lecuna appear to have no source of information except Ducoudray, *op. cit.,* 123-125.

[20] Apparently Feb. 8, 1816; *cf.* Hasbrouck, *op. cit.,* 435, *Registro de Gefes.*

missioner (the Cartagenan Juan Marimón) and Francisco Antonio Zéa, native of Antioquia, the Granadine state adjoining Cartagena. Dr. Marimón held a position of peculiar authority. His fellow refugees were Venezuelans and Cartagenans, whose states remained no longer in independence. Marimón alone represented in Aux Cayes the sovereign authority of the Granadine union, whose government existed still undeposed in the interior of the continent. He was by the law of his land not the president of New Granada in fact, but "president in commission." As such he could still exercise the presidential authority that one year earlier in Cartagena he had exercised, vainly, against the Liberator.

To Marimón and to the meeting Aury presented his grievances and his claims. The siege and evacuation of Cartagena had cost him $25,000, the total of advances made to the government and of property necessarily abandoned upon departure with refugees instead of cargoes. In payment of advances he asked that Marimón should deliver to him the schooner *Constitución*, flagship of the Granadine navy, to which as well as to the state schooner *Republicano* he had made repairs in Aux Cayes at his own expense. In return he offered to form his own vessels, and those belonging to his friends, into an auxiliary squadron that he himself should command under Mexican authority derived from General Cadenas. As an auxiliary commander he could accompany the Venezuelan expedition without sacrifice of dignity.

The meeting granted Aury's demand and accepted his offer. Dr. Marimón as president of New Granada in commission acknowledged, in writing, the transfer of ownership in the schooner *Constitución* to satisfy Aury's claim against the republic. Concealing this transaction the negotiants forwarded to General Bolívar only Aury's offer to serve as leader of an auxiliary force. The letter of refusal that the general wrote on the following day was inspired, in Aury's estimation, by Brión. The Liberator refused to accept a naval force owing allegiance to the Mexican Republic. He set forth that Aury, an officer of New Granada and of Cartagena, remained under obligation to take part in the patriot adventure. He directed that Aury's vessels should be put wholly at the disposal of the commander-in-chief. That meant, as Aury well knew, at the disposal of Luis Brión. The letter showed Aury and the promient personages that no

compromise could be made. They let it be known that the Cartagenan flagship had passed into Aury's possession and so would not take part in the southern enterprise.

General Bolívar summoned Marimón and Zéa before him and Brión. He reprimanded them for their action. He annulled the award that had been made to Aury. He tore into pieces the document whereby the Granadine president in commission had transferred ownership of a Granadine schooner. He called upon the Haitian commandant of Aux Cayes to station troops aboard that cruiser to preserve her and her equipment from conversion to other than Venezuelan use.[21]

Excluded now by irreconcilable differences from the Venezuelan expedition, Commodore Aury returned to his Mexican plan in agreement with General Cadenas. The rivalry this plan created threatened to impede the proposed descent upon the southern continent. General Bolívar appealed to President Pétion. In the last days of February the president sent orders to the commandant of Aux Cayes. He directed that the "so-called Mexican authority" should not be recognized in Haiti; that the "so-called Mexican flag" should not be raised; that no Mexican expedition should prepare in Aux Cayes. He ordered his commandant to prevent the departure of any patriot vessel that should be unwilling to follow General Bolívar.[22]

A vessel that had departed about February 12 carried news that reached the Mississippi River mouth on March 13. Men of New Orleans who had made themselves patrons of Spanish-American independence learned that Cartagenan refugees with muskets and ammunition and a few fine cruisers were waiting ready to join an expedition that the New Orleans Associates had been planning against Tampico, whence access might be had to Mexican silver mines.[23] José Manuel Herrera, Mexican republican agent in New Orleans, prevailed upon Joseph Sauvinet, an Associate, to dispatch a schooner to Haiti with the proposal that the Associates were making to Commodore Aury. By hand of the Associates' messenger, the mulatto Colonel Joseph Savary late of Haiti, Herrera sent Mexican privateer commissions

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[21] Aury to Maignet, March 15, 1816, and Memorial, Aury Papers; Ducoundray, *op. cit.*, 125.

[22] Larrazábal, *op. cit.*, I, 417.

[23] William Davis Robinson to Toledo, on board the *Saranac* off the Balize, March 14, 1816, annexed to Onís to Cevallos, Aug. 26, 1816, No. 127, Archivo Histórico Nacional, Estado, Legajo 5559, *expediente* 26.

and the red-bordered, blue-and-white-checkered republican flag[24] in order that Aury's squadron might proceed under Mexican auspices.[25]

Colonel Montilla had sailed for Philadelphia at the end of March after a quarrel with General Bolívar and another with the new admiral, Luis Brión.[26] From Philadelphia in the middle of May Dr. Gual wrote to Mexican friends in Louisiana that a squadron of republican privateers would appear soon in the Gulf on Mexican service. Dr. Gual in his return to the United States was devoting his energies to a project whereby revolutionists and foreign sympathizers in two continents hoped first to bring about the independence of Mexico. Liberation of the viceroyalty and of its Central American dependencies would provide resources and likewise ports on the Gulf, the Caribbean and the Pacific. Thus republicans might destroy Spanish trade from Perú and drive royalists from their strongholds of the Andes.[27]

Participation in attacks upon the royalists did not fail to recommend itself in Haiti. When General Bolívar's expedition was almost ready to leave Aux Cayes a visit paid by Commodore Aury to Port-au-Prince[28] caused President Pétion to modify his previous order. Now the vessels of Cartagena were free to leave when they should acquire continental republican authority.[29] In addition to two cargo vessels Aury assembled four armed schooners, the flagship *Belona* (Captain Alexandre), the *Criolla* (Captain Bellegarde Battigne), the *Centinela* formerly of the royal navy and now commanded by a mulatto from Cap Haitien, and the *Favorita* (Captain Gianni Barbe-en-fume). To his veteran crews of Haitians from Cartagena Commodore Aury added 200 Haitian recruits.[30] Colonel Savary bearing Mexican commissions arrived from New Orleans. Commodore Aury with a quadroon

[24] *Cf. Louisiana Historical Quarterly*, XXIII (1940), 129.

[25] Relation of Herrera, as cited; plan of José Alvarez de Toledo, June 28, 1816, in Archivo General y Público de la Nación [de Méjico], Historia, Operaciones de Guerra, Notas Diplomáticas, v. 2. This early text of Toledo's plan differs somewhat from the revised copy that Toledo later presented to the Spanish legation as a duplicate original; *cf. Louisiana Historical Quarterly*, XXIII (1940), 859.

[26] Ducoudray, *op. cit.*, 131, 134-135, 138.

[27] Onís to the captain-general, Aug. 3, 1816, AGI, PdeC, Legajo 1898; Gual to Toledo, Feb. 8, annexed to Sedella to Apodaca, May 4, 1816, AGI, PdeC, Legajo 1815; *Louisiana Historical Quarterly*, II (1919), 389, XXIII (1940), 756.

[28] *Cf.* Aury to Maignet, Port-au-Prince, March 15, 1816, Aury Papers.

[29] Jóse Félix Blanco and Ramón Azpurua, eds., *Documentos para la historia . . . del Libertador* (14 v.; Caracas, 1875-1878), V, 401.

[30] *Orleans Gazette* (New Orleans), Oct. 18, in Morphy to the captain-general, Oct. 24, 1816, AGM, Notas Diplomáticas, v. 2.

lady and her Negro servant, with General Cadenas and with other adventurers, sailed from Aux Cayes on June 4. Early in July Colonel Savary again in New Orleans brought to Herrera the letter whereby Aury accepted the project of the Associates.[31]

On June 23, off the Cuban port of Matanzas, the *Belona* captured the Spanish brig *Infatigable* laden with molasses, sugar and coffee. The *Centinela* seized the ship *Félix* laden with dried meat. A ship from Málaga with wines, oils, etc.; a Netherlander schooner, New Providence to Havana, with a Spanish owned cargo of textiles; a schooner, Philadelphia to Havana, with flour; two brigs with cotton, all fell victims to various cruisers as the privateers squadron moved westward. The only armed vessels in commission at the Havana naval station were a small schooner and a ketch. These went forth to fight. The *Belona* drove the schooner ashore. The ketch, the *San Fernando,* was captured after a three-hours' battle and became the fifth unit of Commodore Aury's armed force.[32]

Commodore Aury burned two worthless prizes off the Dry Tortugas. Aboard a captured fishing boat he sent his Spanish prisoners to Havana.[33] He dispatched the *Criolla,* the new *San Fernando,* the *Favorita* and the armed cargo schooner *Gran Sultan* to cruise off the coast of Mexico. With the *Belona,* the *Centinela* and the remaining prizes Commodore Aury turned to the northward. At two days' distance from the Mississippi Balize he took a royalist three-master from Campeche. On July 17 his vessels lay off the yellow river down which in the year 1810 the privateer *Vengeance* had carried a wrathful young lieutenant.[34]

Chapter III: Galveston Bay

In almost two decades following the Louisiana Purchase presidential administrations in Washington saw as one of their chief nonmilitary objects the removal of Spain from the Americas and especially from the Two Floridas. Not only French and patriot privateers upon the sea but also those patriot armed

[31] Morphy to the captain-general, July 9, 1816, AGI, PdeC, Legajo 1900; declaration of Herrera (first annex) and relation (second annex), AGI, Audiencia, México, 90-2-9, *loc. cit.*

[32] Philadelphia *Weekly Aurora,* July 23, *L'Ami des Lois* (New Orleans), Aug. 5, Acevedo to Apodaca, Aug. 30, 1816, AGM, Notas Diplomáticas, v. 4.

[33] Fatio to Cienfuegos, May 14, 1817, and annex, declaration of Losano, AGI, PdeC, Legajo 1900, in *Louisiana Historical Quarterly,* XXI (1938), 1090-1091.

[34] Declaration of José Peña, Sept. 30, in *Diario del Gobierno de la Habana,* Oct. 16, 1816, in AGM, Notas Diplomáticas, v. 2. The date of July 17 is indicated by a letter of July 19 from the Balize: *Louisiana Gazette,* July 29, 1816. Peña's information appears in fuller form in a letter from New Orleans: *United States Gazette,* in Richmond *Enquirer,* Nov. 13, 1816.

forces who violated American neutrality on land became conscious or unconscious instruments of administrative will. President Madison in his proclamation of October 27, 1810, made not even mention of the lawless vessels that sailed out of Louisiana marshes against the commerce of Spain.[1] His proclamation of September 1, 1815, directed against violators of neutrality, was forced from him when an outraged governor of Louisiana refused to act further as his political scapegoat.[2] A new federal district attorney in New Orleans, discussing practices of neutrality, spoke to his chief in Washington with little less irony than the governor had used upon an even higher official.[3] In relation to patriot privateersmen President Madison and his successor President Monroe maintained a Jeffersonian policy of *laissez-faire* recognized as such by the Spanish legation, which complained in 1816 that "the laws of this country lend the government plentiful support in excusing itself from correcting evils that it is not to its advantage to obstruct."[4]

The federal neutrality acts of 1797 and 1817 were too weak to be of effect in criminal causes brought in the district courts. Captains and owners of lawless cruisers, indicted under the effective act of 1818, hired expensive lawyers and went free of any penalty. Penniless seamen, convicted in court, became objects of executive clemency. Only one captain commissioned by Commodore Aury (commanding a privateer said to be owned by the customs collector of Savannah)[5] fell victim to the latter act. This man was arrested in Savannah on June 20, 1818; indicted, tried and convicted under the new statute; denied a reversal on appeal in February, 1820; sentenced to death in March for piracy, and then respited by President Monroe and pardoned by the president in June, 1821.[6] So greatly admired was the privateersmen's chief seaboard lawyer, the "counsel of all the pirates" of Baltimore,[7] that upon his death in 1822 the Wash-

[1] *Louisiana Historical Quarterly*, XXIII (1940), 442-443.

[2] *Cf.* Dunbar Rowland, ed., *Official Letter Books of William C. C. Claiborne, 1801-1816* (6 v.; Jackson, 1917), VI, 359. The diplomatic language of this letter to Secretary Monroe has veiled from commentators the accusation that Governor Claiborne makes against President Madison.

[3] Dick to Rush, Aug. 25, 1815, Miscellaneous Letters, June-Aug., 1815, *ff.* 76-77 (National Archives, Washington; MS.)

[4] Onís to Apodaca, July 12, 1816, AGI, PdeC, Legajo 1898.

[5] *Cf. Memoirs of John Quincy Adams*, V, 150-152; *United States Reports*, 5 Wheaton (United States vs. Klintock).

[6] New York *Advertiser*, s-w., July 3, 1818, April 11, May 12, July 4, 1820; *United States Reports, loc. cit.; Memoirs of John Quincy Adams*, V, 19, 21, 55, 63; Washington *Gazette*, July 6, 1821.

[7] *Memoirs of John Quincy Adams*, IV, 413.

ington Bar, meeting in the Supreme Court room, resolved to go into mourning for the rest of the term.[8]

Anglo-Americans in Creole Louisiana were prominent in the New Orleans Association, with which Commodore Aury in Haiti allied himself by correspondence. At the head of the group stood the lawyer Edward Livingston[9] from New York. Among Livingston's chief aides were John Randolph Grymes[10] of Virginia, late federal district attorney; Abner L. Duncan,[11] former territorial attorney-general in Natchez; Duncan's business partner, the merchant John K. West;[12] Customs Collector Pierre Le Breton Duplessis[13] from Philadelphia; the bank president Benjamin Morgan;[14] Aury's agent François Dupuis,[15] who preferred to be known as a planter; Captain Henry Perry, quartermaster and ordnance officer in New Orleans; and Brevet-Lieutenant-Colonel Henry D. Peire, a veteran of the late war against Great Britain. Daniel Tod Patterson, commodore of the New Orleans naval station, acted as a member of the Association to the extent that his official position and orders from Washington both authorized him and permitted him.[16]

One party among the Associates dreamed of capturing the Two Floridas and selling them to the United States for the price (about $2,000,000) that President Jefferson had earlier empowered James Monroe and Edward Livington's brother to offer Spain for the provinces.[17] By letter to Commodore Aury in Haiti the Associates proposed first an attack upon Tampico,[18]

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[8] *United States Reports*, 7 Wheaton, preface.

[9] Morphy to Apodaca, Nov. 20, 1815, AGI, PdeC, Legajo 1836; same to same, Aug. 10, 1816, Legajo 1877.

[10] Morphy to Apodaca, Sept. 17, annexed to San Maxent to Cienfuegos, Oct. 22, 1816, AGI, PdeC, Legajo 1873; Morphy to Cienfuegos, Oct. 24, 1816, AGM, Notas Diplomáticas, v. 2; [Pedro de Alba] to Masot, Jan. 3, annexed to Masot to Cienfuegos, Jan. 11, 1817, AGI, PdeC, Legajo 1874.

[11] Herrera to the Congress, Nov. 26, 1815, AGM, Notas Diplomáticas, v. 1; declaration of Herrera (April 22, 1818), AGI, Audiencia, México, 90-2-9, *loc. cit.*; Sedella to Apodaca, Aug. 5, 1816, AGI, PdeC, Legajo 1815; Morphy to Cienfuegos, Oct. 24, 1816, AGM, Notas Diplomáticas, v. 2; *Kentucky Reporter* (Lexington), Oct. 11, Nov. 22, 1816.

[12] Herrera to the Congress, Nov. 26, 1815, as cited.

[13] Sedella to Apodaca, Aug. 5, 1816, as cited.

[14] Declaration of Herrera, as cited; Morphy to Apodaca, Sept. 4, 1815, AGI, PdeC, Legajo 1836.

[15] Declaration of Herrera, as cited; Morphy to Apodaca, Aug. 10, 1816, AGI, PdeC, Legajo 1877.

[16] Robinson to Toledo, Balize, Thursday, March (?), 1816, annexed to Onís to Cevallos, Aug. 26, 1816, AHN, Estado, Legajo 5559, *expediente* 26; Sedella to Apodaca, Aug. 5, 1816, AGI, PdeC, Legajo 1815.

[17] *Cf. Louisiana Gazette*, July 29, 1816; Morphy to Apodaca, July 31, 1816, in correspondence of the Havana naval station, AGM, Notas Diplomáticas, v. 4; Herbert Bruce Fuller, *The Purchase of Florida* (Cleveland, 1906), 106, 111.

[18] Declaration of Herrera, as cited; Toledo's plan, as cited; *cf.* Robinson to Toledo, March (?), 1816, as cited.

port of Mexican silver mines. To Aury they promised command upon the sea; Colonel Peire would command the soldiers who should be disembarked from transports.[19] Meanwhile a temporary port was needed. Inspection of the uninhabited and almost unknown coast of Spanish Texas resulted in decision to occupy Galveston Bay, just beyond the Texas-Louisiana border.[20]

So secretly did the Associates keep a message received from the river's mouth in July that not until the twenty-ninth could New Orleans read in public print the news of Aury's arrival.[21] Four days later the Spanish vice-consul knew that ten little vessels with many men had left the town in quest of Spanish prize goods and that five others were preparing for service as cruisers.[22] Already the Associates had instructed their new commodore how to avoid embarrassing their friend in the customhouse. Aury had sent the *Centinela* to the westward with his prize convoy. Aboard the *Belona* he himself touched at Barataria Pass some days later to disembark General Cadenas with $7,000 in gold and silver and with eighteen barrels of precious cochineal. On August 4 the Mexican from Haiti presented himself to the Associates.[23]

Westward from Barataria sailed the *Belona,* and Commodore Aury had time to consider bad news that any one at the Balize could have told him. The Mexican Congress had dissolved. The Mexican Republic no longer existed except in the form of insurgent bands. Promises given by Cadenas in Haiti were worthless now. A homeless commodore, exiled by the enmity of a rival, hung dependent on his own efforts and on the willingness of odious Anglo-Americans to provide him with soldiers.[24] Yet westward toward Spanish Texas sailed Commodore Aury. On August 3 a desolate beach broke before him in a pass between low headlands. Within the pass lay the harbor to which the Associates had sent him. The *Belona* found a channel to lead her through the oyster banks that sheathed a bar in the entrance. She put herself on to the shoal. There she lay during two days

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[19] Iturrabarría to Rieux, May 15, annex 3 to Fatio to the captain-general, May 24, 1817, AGI, PdeC, Legajo 1900.

[20] Sedella to Apodaca, Aug. 5, 1816, AGI, PdeC, Legajo 1815, as cited; Morphy to Apodaca, Aug. 2, 1816, AGM, Notas Diplomáticas, v. 4, *loc. cit.*

[21] *Louisiana Gazette,* July 29, 1816.

[22] Morphy to Apodaca, July 31, Aug. 2, 1816, AGM, Notas Diplomáticas, v. 4, *loc. cit.*

[23] Sedella to Apodaca, Aug. 5, 1816, AGI, PdeC, Legajo 1815; declaration of Peña, AGM, Notas Diplomáticas, v. 2. Communication of Aury with the Associates in July is inferred, but is not asserted directly in any text cited.

[24] Relation of Herrera, as cited

until the tide brought by an east wind floated her free. With open seams the *Belona* entered the bay, turned southwestward and lay in the anchorage behind Galveston Island. On August 8 the *Centinela* and her convoy appeared off the pass.[25]

Commodore Aury had yet to learn wisdom. Without sounding the southeast pass he ordered the Netherlander prize to be brought in. The schooner went on the shoal and bilged there in the surf. Aury sent Captain Alexandre to sound the pass and then to bring in the ship *Félix*. The *Félix* joined the schooner on the shoal. On August 10 the first little vessels arriving from New Orleans brought Aury an American pilot, who tried his luck with the ship from Málaga in the south pass.[26] This ship went on the beach, not on the central bank, and much of her cargo could be saved. Then a brig and another ship added themselves to the wreckage. Commodore Aury brought into the harbor only the ship from Campeche, in ruinous condition, and the *Centinela*. Admiral Brión himself was never to do much worse by Commodore Aury's vessels.[27]

Haitian veterans and recruits aboard the *Belona* and the *Centinela* began the labor of salvaging prize cargoes. They carried ashore half-a-dozen pieces of artillery.[28] They built huts on Galveston Island, one for the commodore and his quadroon lady. They started repairs on the *Belona*. At the end of the month the schooner *Favorita* and the ketch *San Fernando* arrived from the Vera Cruz coast. The *Criolla* too came in; the number of Haitian recruits at Galveston totaled two hundred. Aury had promised in Haiti that his sailors should spend prize money in New Orleans. Now these men from a land of forest and of mountain found themselves condemned to toil on a sandbar without one tree to shelter them from the September sun of Texas. On the night of September 7-8 they rose in mutiny aboard the *Criolla*.[29] The *Favorita* and the *Centinela* were again at sea with

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[25] *Cf. Louisiana Historical Quarterly*, XXI (1938), 1092 and note 18. For dates of Aug. 3 and 8 *cf.* declaration of Peña, as cited, and declaration of Cosme García annexed to Arredondo to Apodaca, March 8, 1817, AGM, Historia, v. 152. Aury himself sets his arrival as "some time in July:" speech of Aury, Dec. 12, 1817, Charleston *Courier*, Jan. 9, in New York *Advertiser*, s-w., Jan. 20, 1818.

[26] The two passes, now dry land, joined the line of the modern ship channel within the entrance; *cf.* Alexandro Thompson, *Plano de la Bahia y Puerto de Galveston . . . 1828* (University of Texas; MS.); *Galveston Entrance*, U. S. Coast and Geodetic Survey (Washington, 1929).

[27] Declaration of Peña, as cited.

[28] Declaration of José María Pozo in AGM, Historia, v. 152, *loc. cit.*

[29] *Cf. Louisiana Historical Quarterly*, XXI (1938), 1092 and note 18. Peña said, September 6 or 7. The night of September 7-8 is the time confirmed by reference to events of the subsequent five days.

veteran crews. The *Belona's* artillery was all out of commission. Mutineers ashore spiked the guns that had been landed. They invaded the cabin of their commodore and his lady. Louis Aury sprang up. "Upon command that he should surrender he replied with fury, heaped them with abuse and with epithets and at the same time put his hand to his knife. When they saw him do this one of the Negro leaders fired a pistol, and the bullet passed through his right hand and part of his left breast. Then he fell to the ground."[30]

Mutineers possessed the camp of Galveston. The 200 recruits loaded the *Criolla* and the *San Fernando* with prize goods worth $60,000 and tried to burn the unseaworthy *Belona.* Then they sailed hastily for their native land, taking with them the *Centinela,* which they met coming in as they left the bay. Two days later,[31] on September 10, José Manuel de Herrera arrived from New Orleans with Mexican authority for a slightly wounded commodore.

Herrera had come to New Orleans on November 1, 1815, on his way to Washington as ambassador of Mexican republicans. He wrote immediately to Dr. Gual in Philadelphia. He formed an export company with the Associates for shipments of munitions.[32] News of anarchy among Mexicans deterred him in December from continuing his journey. News later arriving that the Mexican Congress was no more, destroyed his influence in the New Orleans Association. The first knowledge of Aury's plight in Haiti restored it in part. Colonel Savary's return in July caused Herrera to write to the insurgent commander of Vera Cruz province, "I do not seek to offer you false hopes, but certainly within a month you will receive a visit from a messenger to arrange coöperative movements."[33]

Arrival of General Cadenas with money in hand sent the Associates into session on August 5 and 6.[34] They decided that Herrera should go to Galveston to take possession in the name of Mexican patriots, establish a prize court and remain with Commodore Aury as resident commissioner. Henry Perry, late United States quartermaster in New Orleans, and Bernardo Gu-

[30] Declaration of Peña, as cited.
[31] Relation of Herrera, as cited.
[32] Correspondence of Herrera annexed to Calleja to Onís, April 6, 1816, AGM, Notas Diplomáticas, v. 1.
[33] Annex 9 to declaration of Herrera, as cited.
[34] Morphy to Apodaca, Aug. 10, 1816, AGI, PdeC, Legajo 1877.

tiérrez, veteran of the Texas raids, should lead an army overland to Galveston.[35] About 120 men (whites commanded by Colonel Peire, blacks by Colonel Savary) should sail with Herrera.[36] The ambassador went before an American notary and transferred his diplomatic powers to Luis Iturribaria,[37] a former Mexican delegate to the Spanish Cortes.[38] On August 23, one day before the day set for his departure, he received a letter from Chesapeake Bay.[39]

Dr. Servando Teresa de Mier, most famous preacher and revolutionary philosopher of Mexico, wrote news of his arrival from England with the young Spanish rebel Xavier Mina, 5,000 muskets and officers for an expedition intended to aid in liberating the Spanish viceroyalty. From Norfolk one co-owner of Aury's first Cartagenan cruiser dispatched his own son in a schooner to advise Vera Cruz republicans of Mina's coming.[40] Such news restored somewhat the spirits of Commodore Aury when Herrera reached Galveston to learn of disaster in the passes and mutiny ashore. A conference lasting until September 12[41] was described by Herrera as follows:

> They had hopes, though feeble, of carrying out their project. To begin with they held a meeting composed of Aury and his officers and made me the proposals they judged proper relative to the payments and privileges they desired in return for their services. I agreed to what they proposed, on condition of submitting it to the knowledge of whatever authority might be governing the revolutionists and that without approval and ratification by such authority nothing should be taken for granted. Under this express condition a provisional form was given to the establishment, which I put under command of Aury.[42]

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[35] *Cf.* Gutiérrez to Herrera, Sept. 23, 1816, Garza Papers, University of Texas, MS.; declaration of Pozo, as cited.

[36] Sterling to Wilkinson, Sept. 26, 1816, Rosenberg Library, Galveston, Transcript; *cf. Louisiana Historical Quarterly*, XXI (1938), 1092.

[37] Iturribarría to Rieux, May 15, 1817, AGI, PdeC, Legajo 1900, *loc. cit.*

[38] Annexes to Calleja to Campo Sagrado, Sept. 30, 1816, papeleta 81, AGI, Audiencia, México, 90-2-1.

[39] Relation of Herrera, as cited.

[40] Relation of Herrera, as cited; Hernández y Dávalos, *op. cit.*, VI, 907; William Davis Robinson, *Memoirs of the Mexican Revolution* (2 v.; London, 1821), *passim.*

[41] Speech of Aury, Dec. 12, 1817, as cited; *State Papers and Publick Documents*, XXI, 424-425.

[42] Relation of Herrera, as cited; *cf. State Papers and Publick Documents*, XII, 424-425; *Memoirs of John Quincy Adams*, IV, 76. The provisional character of the government is confirmed by Captain Hugh Sterling in his letter to Wilkinson, as cited. Aury in his speech of Dec. 12, 1817, represents his authority as competent "unless contrary orders were given by the Congress itself." The question of an ambassador's competence to exercise executive authority in his own country, like a special commissioner, is not raised; *cf. National Intelligencer*, Feb. 26, 1818.

On October 18 the *Orleans Gazette* published to the world the proclamation that on September 13 Herrera issued at Galveston with the raising of the checkerboard Mexican flag. The proclamation contained no mention of a provisional form of government or of strained relations existing on a desert sandbar. Herrera intended to go back to Mexico; yet unless he should remain at Galveston as a commissioner like Dr. Marimón in Cartagena there would be no one to restrain Commodore Aury from exercising the "full and ample powers" that afterward he claimed.[43] Aury in a previous year had had all too much experience as naval subordinate to a military chief. Now in Galveston he had demanded appointment as supreme civil and military governor.[44]

Louis Aury had his way. The Commodore who had failed to become admiral upon the seas became governor upon the land. From the day of his appointment he called himself general. No longer subordinate he entered upon a search for a republic that he might call his own. "Aury's dream was always Republic," said one of his friends.[45] In his youth he had worshipped the goddess Fortune and still spoke kindly of her, but republican ambition led him henceforth to worship the god of Chance. Experience in republicanism had taught him nothing of democracy. Into the chief positions of his new Mexican government he caused Herrera to put only men of Cartagena.[46] Colonel Peire and the other patriot officers from Louisiana, all veterans of the war with Great Britain, received no civil appointment at all. Within two weeks the civil and military governor gained the ill will of the Americanos.[47] He did to others what throughout a year and more he had been complaining that others had been doing to him. When Ambassador Herrera sailed for Mexico in late October aboard the *Gran Sultan* (Captain Sebastián Boguier) Colonel Peire sailed with him.[48] Aury continued his quarrels with Colonel Perry, successor in command to Colonel Peire.

Commodore Aury at sea continued also his war upon the king of Spain, but not now with many vessels of his own. Only the *Favorita* remained of his Cartagenan squadron. Mutineers

[43] *Cf. State Papers and Publick Documents*, XII, 424-425.
[44] Speech of Aury, Dec. 12, 1817, as cited; Aury to Maignet, Jan. 25, 1817, Aury Papers; Iturribarría to Rieux, May 15, 1817, as cited.
[45] *Mémoires du Commandant Persat*, 33.
[46] *Louisiana Historical Quarterly*, XXII (1939), 1065-1066.
[47] Sterling to Wilkinson, Sept. 26, 1816, as cited.
[48] Alamán, *op. cit.*, IV, 491-492.

had stolen the *Criolla,* the *Centinela* and the *San Fernando.* Captain Charles DeWater took the unseaworthy *Belona* schooner to the New Orleans shipyards to be rerigged as a hermaphrodite brig. Captain Boguier, a former barber from St. Thomas Island,[49] lost the *Gran Sultan* on the rocks, though saving his crew, after landing Herrera and Peire at Boquilla de Piedras.[50] But other vessels hurried to Aury's aid. "Every day," the Spanish vice-consul reported from New Orleans, "much small shipping sails from this port for Matagorda,[51] some with provisions, others with various persons who are speculators in prize goods, and in all of them go passengers who it is said are going to seek their fortune in Mexico."[52] By the end of the year Commodore Aury had authorized the cruising of some twenty privateer vessels,[53] which he commissioned "by virtue of the powers conferred upon him."[54]

To combat these little seawolves the royalist naval station of Vera Cruz had only one coast guard brig, too rotten to navigate in bad weather,[55] and some tiny craft incapable of offense.[56] The armed vessels owned by Havana's chamber of commerce *(consulado)* were too few and (most of them) too slow to alarm the privateersmen. Spanish warships from transatlantic convoys could seldom be detached for colonial duty and only for a week or two at a time. Back to Galveston came Galveston's privateers with cargoes of Spanish prize goods and sometimes with prize ships in company. The most valuable capture was a ship from Central America reported to be carrying $278,000 in silver and half a million dollars' worth of indigo.[57] The admiralty court of Galveston sat on shipboard, with Commodore Aury or one or another minor judge presiding.[58]

The shallow bay guarded the patriots from any possible attack that might be directed against them by land. The bay had

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[49] London *Courier,* March 24, 1819.

[50] Speech of Aury, Dec. 12, 1817, as cited: *cf. Gazeta de México,* Dec. 15, 1816.

[51] The true location of Aury's establishment was not yet generally known in New Orleans and was falsified even in Herrera's proclamation.

[52] Morphy to the captain-general, Sept. 17, annexed to San Maxent to Cienfuegos, Oct. 22, 1816, AGI, PdeC, Legajo 1873.

[53] Declaration of Pozo, AGM, Historia, v. 152, *loc. cit.*

[54] Commission of the *Diana* (Texas Collection, Library of Congress: MS.), translation by Elizabeth Howard West, with typographical errors and date of May instead of March, in Galveston *Daily News,* Nov. 18, 1917 (scrapbook, Rosenberg Library, Galveston.) For list of some other commissions see *American State Papers, Foreign Relations,* IV, 136.

[55] Apodaca to Estado, April 13, 1818, AGI, Estado, México, Legajo 13.

[56] *Cf.* Ormigo to Alcalá, July 26, in *Gazeta de México,* Oct. 25, 1816.

[57] *Louisiana Historical Quarterly,* XXII (1939), 1053.

[58] *House Documents,* 15 Cong., 1 Sess., v. 2 (Ames 6), No. 12, page 7.

received the name of Galveston (Gálveztown) in 1785. In 1816 the patriots applied the same name not to the 30-mile length of the Isla de Culebra, but only to the northeastern end where stands today the older part of the modern city. Aury's Galveston Island ended on the southwest in a marsh that extended a long arm northeastward behind the Gulfside beach. Between the arm of marsh and the bay the ridge of silt and sand that was Galveston Island raised itself six feet above high tide. A well near the bayside yielded brackish drinking water.[59] Half-a-dozen cannon armed a small square earthwork, never to be completed, that faced the anchorage. A few cabins of plank and sailcloth for the officers and other cabins of reeds and wattles and thatch formed a village represented soon in the New Orleans district court as "a considerable and well built town, with coffee houses, shops, etc."[60] Colonel Peire's white soldiers, commanded now by Colonel Perry, formed the resident garrison. Aury's 200 Haitian veterans and perhaps some of Colonel Savary's mulatto company from New Orleans sailed aboard privateer vessels. Aury's own officers, both white and black, dressed in the French naval mode. The sailors wore nondescript garments. The soldiers from New Orleans came equipped with muskets, bayonets, swords and outdated blue dragoon uniforms, with short coat and white-feathered cap.[61]

Provisions for the garrison and the privateer crews arrived from New Orleans in merchant vessels that carried back and through the New Orleans customhouse cargoes of prize goods whose identifying labels had been removed from the bales. Thus the Spanish consulate was seldom able to present a specific complaint without which a civil action for recovery of goods imported could not be instituted in the federal district court.[62] The best lawyers in New Orleans counseled the privateersmen how to avoid liability in criminal processes, which an unsympathetic district attorney, assuming office in December, could have instituted before the grand jury. Provisions came also down the Calcasieu River of western Louisiana and went onward to Gal-

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[59] Thompson, *Plano de la Bahia*, as cited; *Louisiana Historical Quarterly*, XXIII (1940), 775.

[60] *American State Papers, Foreign Relations*, IV, 136-137.

[61] Declarations in AGM, Historia, v. 152, *loc cit.*; declaration of Antonio Aguirre, March 4, 1817, Nacogdoches Archives, Texas State Library, Austin; MS.

[62] Apparently for this reason Aury's authority was not considered by the United States Supreme Court on appeal from the federal trial court of New Orleans. An adverse decision in the criminal cause of United States vs. Klintock (*United States Reports*, 5 Wheaton) was based on scanty evidence presented in the trial court in Georgia under a statute not yet existent when Aury's admiralty court was at Galveston.

veston Bay in barges, which carried back prize goods (through bayous instead of the customhouse) packed in 200-pound bales for transhipment to muleback. Commodore Aury issued salt meat and biscuit as a semi-weekly ration to his men. Other provisions they might buy at the "coffee houses, shops, etc."

In those days when bills of exchange had not been developed into a common credit, when hard money passed from hand to hand in towns and cautious Creoles of New Orleans refused to take checks on the banks, Galveston enjoyed a monetary system in advance of the time. An uncomprehending Spanish prisoner reported that "they pay the people with drafts *(vales)* of different denominations, signed by Aury and his secretary."[63] Thus with warehouse receipts Commodore Aury created a national currency.

It was his currency. It was his nation. The sea that broke in surf on the beach of his island was his sea. He commanded it. A Frenchman and a Jewish colonial Fleming of Curacao had supported opposing political factions in a town of South America. In a West Indian island they had contended as rivals for one political appointment. As a result Commodore Aury in the autumn of 1816 awaited on the coast of Texas the reinforcement led by General Mina.

Chapter IV: Fernandina

General Mina brought his expedition from Liverpool to Baltimore[1] and into immediate financial difficulties.[2] Dr. Gual lent his influence with the State Department and wrote out a proclamation to be issued by Mina in Mexico. Colonel Montilla enlisted men in New York[3] and received appointment as chief-of-staff. Mina in Baltimore used credit instead of cash[4] to buy the hermaphrodite brig *Calypso*. In September, when the expedition sailed for Port-au-Prince,[5] Mina's plans for an invasion of Mexico were still in-

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[63] Declaration of Pozo, as cited.

[1] Joseph B. Lockey, "The Florida Intrigues of José Alvarez de Toledo," in *Florida Historical Quarterly*, XII, 145-178; Harris Gaylord Warren, "The Origin of General Mina's Invasion of Mexico," in *Southwestern Historical Quarterly*, XLII, 1-20.

[2] Onís to the captain-general, July 14, 23, 1816, AGI, PdeC, Legajo 1898.

[3] Hernández y Dávalos, *op. cit.*, VI, 806. Much of the mystery discussed by Lockey, *op. cit.*, 162-165, is clarified by reference to this passage from the relation of Dr. Mier; *cf.* Onís to the captain-general, Dec. 8, 1816, AGI, PdeC, Legajo 1898; Philadelphia *Aurora*, Dec. 9, 12, 15, 1816; Larrazábal, *op. cit.*, I, 442. Dr. Mier's more extensive draft of his relation is preserved among the Garza Papers, University of Texas.

[4] *Cf. Cartas del Libertador*, I, 253.

[5] Robinson, *op. cit.*, 95-100.

complete; they depended upon coöperation with the squadron of Commodore Aury and the vessels owned by the New Orleans Associates.[6]

In Port-au-Prince General Mina found preparations just beginning for a South American expedition under command of General Bolívar. The dissention of Aux Cayes had continued in Venezuela and had driven the Liberator from the continent.[7] Rebellious subordinates, finding his absence more distressing than his presence, had sent Francisco Antonio Zéa to recall him to supreme command.[8] The faithful Brión was waiting at Aux Cayes with seven vessels, privateers and prizes. Two fugitive schooners arrived just then, brought back by the mutineers of Galveston,[9] and the *Criolla* appears to have entered directly into the Venezuelan squadron. A letter from Mina had come previously to the Liberator.[10] Now Mina in person tried to divert the Venezuelan expedition to Mexican service.[11] He asked the general and the admiral to go with him to Galveston and to put their trust in Commodore Aury, upon whom he himself was depending for aid, even for food. The general and the admiral declined the invitation and in December sailed for the south. Mina himself sailed earlier for the Gulf, but not before sending off Colonel Montilla to gather experienced refugee officers in Jamaica.

Among the Granadine and Venezuelan refugees in the Antilles none enjoyed more public respect in Jamaica than did the Reverend José Cortés Madariaga, a native Chilean, late canon of the Caracas cathedral and president of an early Venezuelan republican council. Practical experience in a royalist prison in Spain had not varied his character of a republcan doctrinaire. More than his chief comrade of imprisonment, escape and exile, the former Venezuelan secretary of state, Juan Germán Roscio, Dr. Madariaga looked with doubt upon military dictatorship even in times of military necessity. Yet General Bolívar, about to reassume his military dictatorship, wrote from Port-au-Prince inviting these and other friends a second time to rejoin him in

[6] Onís to the captain-general, July 14, Aug. 21, 25, 28, 1816, AGI, PdeC, Legajo 1898; Robinson, *op. cit.*, 101-102.

[7] *Cartas del Libertador*, IX, 243.

[8] García Chuecos, *op. cit.*, II, 128.

[9] Report of Segundo Correa, extracted in Onís to the captain-general, Feb. 28, 1817, AGI, PdeC, Legajo 1898.

[10] *Cartas del Libertador*, I, 253-254.

[11] Larrazábal, *op. cit.*, I, 442.

Venezuela.[12] His letter found Dr. Madariaga still in Kingston. Roscio and several military officers late of Caracas and of Cartagena sailed in December not for Venezuela but with Montilla for New Orleans. Soon Roscio, Montilla and other friends continued their voyage to Galveston,[13] where Mina's expedition had arrived late in November.

Commodore Aury remained still at Galveston Bay, since the mutiny had modified the Associates' early intent of an autumn's advance against the royalists. Colonel Peire had forwarded no news from Boquilla de Piedras; insurgent news from all other sources was bad news. Meanwhile Aury quarreled with Colonel Perry and the white recruits whom the Associates had sent to Galveston. Now came Xavier Mina calling himself General, with plenty of supplies, far too many officers, far too few soldiers, no rations and no money. Colonel Perry and his Americanos received Mina with rejoicing. Commodore Aury, bearing a title of general less unauthentic than Mina's own, was the more disquieted. During five days he refused to let Mina disembark his men. Finally he consented. Mina set up his camp at the landing place within the bay. Commodore Aury's supreme Mexican command remained good only as long as Mina and Perry should not join forces to contest it.[14]

Commodore Aury had 200 men aboard his vessels and 160 men, white and black, on Galveston Island. Mina's force amounted to 140 in all.[15] The Associates were detaining 300 recruits in New Orleans.[16] With this combined force and the money of Commodore Aury[17] Mina hoped to carry out a plan of his own. He would land in Matagorda Bay, take Refugio, Bahía and San Antonio and then, across a semiarid wilderness inhabited only by deer and feral cattle, advance to Mexican mountains scarcely more hospitable.[18] No plan could less please a commodore who had intended a naval raid on Tampico; another quarrel flared high on Galveston Island.[19] To learn the will of the Associates, Mina sailed for New Orleans in February, leaving Montilla in command of his troops.[20]

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[12] *Cartas del Libertador*, I, 256-257. At the time of the council of Aux Cayes Dr. Madariaga had only recently escaped from prison in Spain and was still in St. Thomas Island.
[13] Morphy to the captain-general, Jan. 7, 1817, AGI, PdeC, Legajo 1900.
[14] *Cf.* Robinson, *op. cit.*, I, 107, 132; report of Segundo Correa, as cited.
[15] Report of Segundo Correa, as cited; *cf. Louisiana Historical Quarterly*, XXI (1938), 1094.
[16] [Alba] to Masot, Jan. 3, 1817, AGI, PdeC, Legajo 1874, *loc. cit.*
[17] Speech of Aury, Dec. 12, 1817, as cited.
[18] Report of Correa, as cited; *Louisiana Historical Quarterly*, XXIII (1940), 785.
[19] *Louisiana Historical Quarterly*, XXI (1938), 1094.
[20] O'Leary, *op. cit.*, XI, 348-349; *Louisiana Gazette*, Feb. 25, 1817.

Commodore Aury felt that in Mina's absence he might assure himself of his auxilliaries by abandoning Galveston with Perry's men and transferring his headquarters to Matagorda, as Herrera had authorized him to do. On March 1 he put his theory to the test. Colonel Perry refused to permit departure of his Americanos without Colonel Montilla and General Mina's troops. Aury held Perry under arrest. Perry's men declared war. Colonel Savary posted his mulattoes from New Orleans and a few men of Haiti in defence of Aury and the headquarters. Colonel Montilla strove to make peace. He put his own men under arms between the opposing forces. Venezuelan counsel prevailed. The civil and military governor of Texas found his delegated authority to be no more effective than his military strength. Colonel Perry was released. Commodore Aury consented that the soldiers of Galveston should acknowledge Colonel Montilla as their commander until General Mina's return.[21]

General Mina returned in March. The elaborate and expensive campaign that he proposed for Texas did not appeal to the Associates, who had urged upon him instead their plan of capturing West Florida for subsequent sale to the United States. Conflicting interests and ideals resulted in a quarrel that caused the Associates to break relations not only with Mina but with the now superfluous Commodore Aury. Some insurgents coming to Galveston aboard a prize vessel promised Mina that he would find few royalist soldiers but many of their own kind in New Santander (Tamaulipas) province.[22] Mina changed his plan. Colonel Perry and his Americanos decided to go with Mina to New Santander. Colonel Savary and his mulattoes would stay with Aury. Montilla and other South Americans were returning to Venezuela in response to the Liberator's letter to Dr. Madariaga.[23] More successfully than in the case of the schooner *Constitución* at Aux Cayes, Commodore Aury assumed ownership of Mina's *Calypso* in payment for services rendered.[24] In April the vessels of Mina's expedition sailed from Galveston under convoy of Commodore Aury and his privateers.[25]

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[21] Robinson, *op. cit.*, I, 132; *Louisiana Historical Quarterly*, XXI (1938), 1094-1095.

[22] Sedella to Cienfuegos, April 29, 1817, AGM, Notas Diplomáticas, v. 2; *Louisiana Historical Quarterly*, XXI (1938), 1103-1104.

[23] *Cf.* O'Leary, *op. cit.*, VI, 389.

[24] *Cf. Memoirs of John Quincy Adams*, IV, 74.

[25] Narrative of "the captain of Mina's ship *Cleopatra*", in New York *Advertiser*, s-w., Dec. 3, 1819. Captain Hoffler had cleared the transport at New Orleans: *Louisiana Gazette*, March 4, 1817.

To Galveston before Commodore Aury's return came the pirate schooner *Superior* (late *Flying Fish* of New York) commanded by Nicolas Maurice Joly, who had taken prizes in the Caribbean Sea without a commission of any sort.[26] Admiral Brión, learning of Joly's presumption, posted him and the *Superior* as pirates.[27] When Commodore Aury came back to Galveston in May he accepted Joly as an auxiliary and commissioned the *Superior* under the significant name of *Brutus*.[28] Two men who once had owned Aury's first Cartagenan cruiser sent a pirate brig out of Chesapeake Bay under command of Joseph Stafford, who took five prizes before coming to Galveston to commission his brig *Patriota* as the *Patriota Mexicano*.[29]

Despite these accessions to his cause Commodore Aury for the moment had only his personal fortunes to advance. Before the Associates had abandoned him he had respected the trade of Louisiana. Now Spanish-owned goods traveling in Anglo-American vessels became contraband to the cruisers of Texas. Even Commodore Patterson of New Orleans responded immediately to the demand of shippers for armed convoys between the Balize and royalist ports of the Gulf.[30] Commodore Aury transferred his headquarters to Matagorda Bay, seeking in Pass Caballos a deeper entrance than at Galveston[31] and a better fortune than at Pasa Caballos of Cartagena. A norther drifted sand into the pass; Commodore Aury destroyed his trapped vessels by gunfire[32] and returned to Galveston Bay. There some of Colonel Savary's men and some of his own sailors deserted him.[33]

If the Gulf of Mexico had nothing further to offer Commodore Aury, it had given him as much as it had taken. He had lost many vessels. He had retained fewer than 300 men in his service. Yet the *Congreso Mexicano* (late *Calypso*) and the *Belona* remained to him. Joly and Stafford and many other captains would follow him with their own cruisers if he would lead the way. He had proved to Montilla and to Roscio as well as to himself

[26] New York *Advertiser*, s-w., June 17, 20, 1817; declaration of Tiburcio López annexed to Fatio to the captain-general, June 9, 1817, AGI, PdeC, Legajo 1900.

[27] Memorial, Aury Papers; *cf. Mémoires du Commandant Persat*, 38, note.

[28] *Cf.* New York *Advertiser*, s-w., Nov. 28, Dec. 5, 1817.

[29] Declaration of R. W. Richards annexed to Fatio to the captain-general, July 9, 1817, AGI, PdeC, Legajo 1900; *United States Reports*, 7 Wheaton 489, 10 Wheaton 428.

[30] *State Papers and Publick Documents*, XI, 364 *ff.*

[31] Hernández y Dávalos, *op. cit.*, VI, 808.

[32] Castañeda to Martínez, July 26, in *Gazeta de México*, Sept. 6, 1817; same to same, June 13, Martinez to Arrendondo, July 14, 24, 29, 1817, Nacogdoches Archives; speech of Aury, Dec. 12, 1817, as cited.

[33] *Louisiana Historical Quarterly*, XXIII (1940), 774.

that organization of a naval squadron lay within his ability. If he had not justified his rebellion at Aux Cayes he had justified at least in part the offer he had made there of a squadron auxiliary to the squadron of Luis Brión. Now more than ever he could see that the enmity of Brión had ruined his career. To repair the ruin as best he might be decided to join Gregor MacGregor, the Venezuelan general who had created a little republic in Amelia Island, the northeasternmost tip of Spanish East Florida. Commodore Aury wrote one letter of farewell to Ambassador Herrera and another to the customs collector of New Orleans.[34] At the end of July he sailed toward the Florida Straits.

During the month of August Commodore Aury's vessels took prizes in the Straits and elsewhere. On September 11 the *Congreso Mexicano* and part of her prize convoy appeared off Charleston bar seeking news of General MacGregor's fortunes.[35] Late on the fifteenth they lay off the entrance that the Georgia village of St. Mary's shared with Fernandina in Spanish Florida.[36] On the morning of the sixteenth General MacGregor came sailing out, self-exiled from his new republic.[37] A few hours of conversation aboard the *Congreso* revealed to Commodore Aury a story not unlike his own story of Galveston. The failure of patrons in New York, Charleston and Savannah to supply MacGregor with men and money and the rebellion of Americanos like that of Perry in Galveston had destroyed MacGregor's hope of carrying his conquest beyond the borders of Amelia Island.[38]

On to the Bahamas and on to England sailed Gregor MacGregor to plan, like Louis Aury in Galveston, a new adventure. Into the harbor of Fernandina sailed Commodore Aury. With resources drawn from his recent prizes and with half-learned lessons set him in Galveston by Perry and Mina he took over command from lingering adventurers and annexed their republic to his governorship of Mexico. Many little vessels followed him from the Gulf; others came to him from ports of the seaboard. He sent them out to cruise under the Mexican flag. On Novem-

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[34] Speech of Aury, Dec. 12, 1817, as cited; *American State Papers, Foreign Relations*, IV, 136-137.

[35] New York *Advertiser*, s-w., Sept. 23, 1817.

[36] B. A. Copp to Coppinger, Sept. 16, 1817, AGI, PdeC, Legajo 1875. The Fernandina of Commodore Aury's time is the village now called Old Fernandina.

[37] New York *Advertiser*, s-w., Oct. 3, 1817.

[38] T. Frederick Davis, "MacGregor's Invasion of Florida, 1817," in *Florida Historical Quarterly*, VII, 3-71; *National Intelligencer*, Feb. 21, 26, 1818.

ber 20 the agent of Lloyd's in Savannah reported to London that prize goods to the value of $500,000 had been sold in Fernandina.[39]

Values greater than those of prize goods came to Commodore Aury aboard a Venezuelan privateer, the hermaphrodite brig *América Libre* (Captain Lacaze, *alias* Bernardo Ferrero),[40] which left New York Bay before New York City had learned that MacGregor had resigned his command in Fernandina.[41] Aboard the brig came Vicente Pazos Silva, once in northern Argentina (Upper Perú, modern Bolivia) an Indian boy called Pazos Kanki, now a university graduate in the law with three years of experience as secretary to the Argentine "legation" in London and further experience as co-editor of the *Gazeta de Buenos Ayres* until offended Argentine statesmen had sent him into exile. Few knew better than Pazos what plans were making in England, what plans already had been effected there, for supplying Spanish-American patriots with arms and ammunition for the Wars of Independence. Perhaps no other man in the United States knew so well as Pazos, except a fellow voyager aboard the *América Libre,* who was Dr. Gual.

Son of a family long distinguished in Caracas, brother of that Don Manuel who had led there the abortive revolution of 1797, experienced by labors in two continents for the cause of liberty, Dr. Gual had attained at the age of thirty-three years to knowledge and wisdom seldom possessed by revolutionists. "A more honorable man I have never known," an American congressman was to say of him in the House debate of March 11, 1818. The virtues that were to lead him to the highest posts in his native land had made him, Venezuelan as he was, the chosen nonpartisan umpire of Cartagena in a country "where nothing is easier than to hate a Venezuelan."[42] He had acted as counsel in the New York law case of Aury's first Cartagenan cruiser. Now in Fernandina he shared with Commodore Aury his knowledge and his wisdom.

Commodore Aury's pride in command of his little republic could fade in the glory of a plan that Dr. Gual made to shine

[39] *Bell's Weekly Messenger* (London), Jan. 1, 1818.

[40] *Mémoires du Commandant Persat,* 22. Ferrero had commanded a schooner in General Bolívar's expedition of March, 1816, from Aux Cayes.

[41] *Cf.* New York *Advertiser,* s-w., Sept. 23, 1817; *Mémoires du Commandant Persat,* 21, 23.

[42] *Cf. Cartas del Libertador,* II, 145. "An angel, not a politician," General Bolívar called him: *ibid.,* V. 88.

before him. Aury's humiliation before the Liberator and the admiral in Aux Cayes, his vagabond exile of two years, his losses and his failures in the gulf, all were to be repaid him. Bolívar and Brión might liberate their Venezuela. Aury would liberate his own New Granada.

To liberate first the Isthmus of Panamá, part of the viceroyalty of Santa Fé, was the hope that Dr. Madariaga in Kingston still cherished for his unliberated Chile as he had cherished it in years of Spanish captivity.[43] Dr. Gual in Philadelphia had advanced a variant of that hope with liberation of Mexico preliminary to republican victories in South America. Now the army of free Argentina was preparing for a westward march against the royalists beyond the Andes. Former colleagues of Vicente Pazos were forwarding a comprehensive plan in accord with British merchants to whom Gregor MacGregor would soon be telling news in London. To complete the plan there was lacking only a capable squadron in the Caribbean Sea. Such a squadron Commodore Aury held under his command.[44]

Even the influence of Dr. Gual might not win for Commodore Aury admission into such Venezuelan ports as General Bolívar and his admiral had liberated near the Orinoco mouth. The influence of London must have time to make itself felt. Meanwhile Commodore Aury must use profits from Fernandina to increase the number of his own cruisers. It was a cause of annoyance rather than of distress that Aury found it necessary on December 23 to surrender Amelia Island to the Army and Navy of the United States. He sent little auxiliaries to sell prize goods at Galveston.[45] He sent the *Brutus* on February 3[46] with Captain Joly as commodore of a strong auxiliary squadron (not Aury's own vessels) to enlist Haitians for a Caribbean project, to prey upon the royalist shipping of Cuba and to wait in the Mona Passage, between Hispaniola and Puerto Rico, for Aury's coming in the month of May. The *Congreso Mexicano* remained in port; so did the *América Libre,* which had passed into Aury's

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[43] *Boletín de Historia y Antigüedades* (Bogotá), VII, 346-347.

[44] The sequence of events justifies inference that Dr. Gual in Fernandina knew the current status of the European plan and that he (or Lino de Clemente, Granadine agent in Philadelphia) offered Aury's services to the London Associates. Renovales, in his statement cited below, testifies that London had assigned a part in the plan to Aury not later than May, 1818. As to a later date, the Spanish embassy correspondence confirms this testimony.

[45] Fatio to Cienfuegos, March 28, April 10, 1818, AGM, Notas Diplomáticas, v. 2.

[46] *Bell's Weekly Messenger,* June 7, 1818.

possession.[47] Dr. Gual had sailed on January 11 on an 18-day voyage to Kingston,[48] whence he soon continued on his way to St. Bart's.

As an unwelcome guest of the United States Army Commodore Aury stayed on in Fernandina more than two months. On March 5 the *Congreso Mexicano* and the *América Libre* halted off Charleston bar to put their commodore ashore.[49] Then they went back to Savannah to refit[50] and to send Captain Stafford and his new Argentine privateer brig *General San Martín* to a rendezvous at St. Bart's.[51] In Charleston the commodore tried to keep secret his plans, but the Spanish consulate contrived to learn that he was about to sail against the Isthmus, with colored troops to be recruited in Haiti.[52] In England Gregor MacGregor also kept secret his plans,[53] but dining with London Associates about the end of February he bestowed upon his neighbor at table the following words:

> I shall soon make an expedition. I shall land at Cartagena or under the walls of that place. I was present at the launching of Lord Cochrane's ship, with which he will double Cape Horn and come to help me in attacking the Isthmus of Darién by the Pacific Ocean.[54]

In London also Mariano de Renovales, a celebrated but proscribed Spanish general, had abandoned his first thought of joining General Bolívar[55] and was preparing an expedition against Vera Cruz for a departure late in May. On April 10 the Spanish consulate in New Orleans reported that Aury's auxiliary schooners in the Gulf were recruiting men in New Orleans, intended to recruit more in Haiti and then would go on to Margarita Island of Venezuela.[56] On about the same day the *América Libre* sailed again from the Charleston bar.[57] So too sailed the flagship *Congreso Mexicano;* Italian officers trained in the armies of Napoleon

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[47] *Mémoires du Commandant Persat*, 34-35.

[48] *Cf.* New York *Advertiser*, s-w., Jan. 30, and New York *Evening Post*, s-w., March 11, 1818 (the *República de Buenos Ayres*).

[49] New York *Evening Post*, s-w., March 18, 1818.

[50] Fatio to Cienfuegos, April 10, 1818, AGM, Notas Diplomáticas, v. 2.

[51] *Cf. Bell's Weekly Messenger*, May 3, and New York *Evening Post*, Sept. 2, 1818.

[52] Onís to Cienfuegos, March 29, 1818, AGI, PdeC, Legajo 1898.

[53] Narrative, London, April 8, annexed to Eguía to the captain-general of the Two Floridas, July 10, 1818, AGI, PdeC, Legajo 1912.

[54] Narrative, Aug. 31, annexed to San Carlos to Pizarro, London, Aug. 31, 1818, Archivo General de Simancas, Estado, Legajo 8289 (*anterior*).

[55] *Cartas del Libertador*, II, 9-11.

[56] Fatio to Cienfuegos, April 10, 1818, Notas Diplomáticas, v. 2.

[57] New York *Advertiser*, s-w., April 24, 1818.

discussed with their commodore how the royalist port of Vera Cruz might best be attacked.[58] The *Brutus* cruised the Mona with a profitable prize brig destined to the Venezuelan admiralty court of Margarita.[59] Off the southern coast of Cuba Aury's schooner *Eclair* (Captain Denis Thomas) cruised with two prizes for Margarita.[60] On April 18 the *Congreso Mexicano* was spoken in the southern Bahamas; already she had dispatched one prizeship to the Margaritan court.[61] To the southward, then down the Anegada Channel and down Five Islands Channel toward St. Bart's Commodore Aury in the second week of May took the *Congreso Mexicano* and three attendant privateers.

The Spanish government had not neglected to station an agent in St. Bart's,[62] most notorious point of transfer between privateers and neutral merchantmen, between transatlantic carriers and the republican vessels of Venezuela. News of patriot squadrons waiting for British cargoes in Five Islands Channel had gone northwestward to Havana and southward to the British West Indian Island of Grenada. At Grenada it found at the British naval station a Spanish naval squadron of small vessels just arrived from Cádiz.[63] As one squadron sailed from Havana and another from Grenada to a rendezvous at St. Bart's, Commodore Aury sailed into Five Islands Channel.[64]

To Fourcher Island (Ile Fourché), seven miles short of St. Bart's, sailed Commodore Aury. There in the anchorage he came upon five warships lying as if in wait. A corvette bulked large beside one brig and three schooners.[65] Commodore Aury could see that this was not a hostile squadron. Yet it symbolized the hostility that had ruined his career. The enmity that during three years had contended with him, that was to contend with him three years more, gathered itself together on the corvette *Victoria's* quarterdeck. There ruled the admiral of Venezuela, Luis Brión.

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[58] Codazzi, *op. cit.*, 278.

[59] *Bell's Weekly Messenger*, June 7, 1818.

[60] *Bell's Weekly Messenger*, July 5, 1818. *Cf.* New York *Evening Post*, s-w., June 3, 1818.

[61] *Bell's Weekly Messenger*, July 5, 1818.

[62] Hasbrouck, *op. cit.*, 66.

[63] New York *Advertiser*, s-w., July 3, 1818; London *Courier*, Aug. 6, 1818.

[64] The combined royalist squadron numbered nine vessels, but only six reached the rendezvous. These included two heavily armed corvettes detached from the convoy fleet of Havana, the former American ship *Young Wasp* (500 tons burden) and the *General Scott* of New York (1,000 tons burden), which was "one of the fastest vessels that ever floated," known in Havana as the *Ninfa*. *Cf.* Baltimore *American*, Oct. 11, in Richmond *Enquirer*, Oct. 12, 1816; *Niles' Weekly Register*, May 31, 1817; New York *Advertiser*, s-w., Oct. 24, 1817, July 10, 1818; Bartolomé Mitre, *Historia de San Martin* (4 v.; Buenos Aires, 1890), II, 90.

[65] *Cf.* Charleston *City Gazette*, in New York *Advertiser*, s-w., July 10, 1818.

CHAPTER V: THE MONA PASSAGE

Increasing shipments of arms, like those carried in 1815 by Captain Brión's ship *Dardo,* sailed out of British ports in the years 1816-1817,[1] dispatched for republicans of South America by López Méndez, del Real, Fonte and Álvarez, London agents respectively of Venezuela, New Granada, Buenos Aires and Chile. In the early months of 1818 vessels prepared in ports of England, Scotland and Ireland to carry across the ocean the expeditions of MacGregor (against the Isthmus), Renovales (against Mexico) and Lord Cochrane (against the royalists of Chile and Perú).[2] The Spanish consul in New Orleans reported that General Lallemand, leader of French raiders in Texas, expected the aid of Cochrane and Aury in continuing his advance into Mexico.[3] MacGregor's chief-of-staff in London was heard to say that after crossing the Isthmus (whether of Panamá or of Darién) MacGregor would board the vessels of Lord Cochrane's squadron and sail to conquer the Philippines.[4] British soldiers destined to the armies of General Bolívar were enlisted openly in London; highlanders recruited for MacGregor were mustered and marched through the streets of Edinburgh "in the face of day and under the eye of the British authorities."[5]

Only four days remained before the date late in May set by General de Renovales for his departure against Mexico with English recruits reported to be 3,000 in number. Then a special commissioner of the Spanish king, appearing at the embassy in London, completed in secret an arrangement with Renovales that other agents with equal secrecy had begun. Renovales sailed in June with only his officers and equipments. To the Spanish consulate of New Orleans he delivered in September the following revelation:

> The general intention with which since the first of this year the agents of the governments of Buenos Aires, Chile, Venezuela and New Granada have concerned themselves in London is the liberation of the Viceroyalty of Mexico. They

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[1] Chargé d'affaires to Castlereagh, London, May 14, 1817, AGS, Estado, Legajo 8286 *(anterior)*; undated lists of August and December, 1817, Legajo 8289 *(anterior)*.

[2] San Carlos to the *Corte*, June 2, and other correspondence of the year 1818, AGS, Estado, Legajo 8289 *(anterior)*.

[3] Apodaca to Guerra, June 30, 1818, AGI, Estado, México, Legajo 13.

[4] Narrative annexed to San Carlos to Pizarro, Aug. 31, 1818, AGS, Estado, Legajo 8289 *(anterior)*.

[5] Hasbrouck, *op. cit.*, 44-70; Washington *Gazette*, in New York *Evening Post*, s-w., June 20, 1818.

> have taken upon themselves the military and naval preparations for beginning operations, to the amount of 150,000 pounds Sterling in vessels and equipment . . . . MacGregor is about to sail with three armed vessels and several transports. He carries with him 100,000 muskets, 3,000 rifles, an equal number of pairs of pistols, sabres, lances and munitions. He is to bring from 800 to 1,000 enlisted men whom they have lured away, Poles, Germans, Italians and French, who have served in the army of Napoleon. With this force and 2,000 men from Bolívar's troops I was to have acted, supported by the naval forces of MacGregor, Brown[6] and Aury, in order to approach Vera Cruz by surprise and to capture some point, on the coast or its neighborhood, capable of being fortified and defended, in order to establish in it a representative Mexican government. . . . Cochrane was nearly ready to start with his ship the *North Pole* for [Chile]. . . . My withdrawal will probably bring about a change of operations in relation to the coasts of the Gulf.[7]

These naval plans of London had little interest for Admiral Brión, whose duty it was to tranship and to carry to Venezuela the munitions and the recruits that Luis López Méndez was sending to the West Indias for General Bolívar. It was enough for Brión to know that storms had deprived the Mexican viceroyalty of all but one armed merchant vessel in the Gulf; that the squadron newly purchased by Havana's chamber of commerce for protection of Cuba's own trade was ordered into national service to convoy transatlantic shipping; that the Spanish fleet guarding Porto Bello and the Isthmus was totally out of commission; that the royalist naval station of Cartagena de Indias lacked facilities for maintaining its own vessels. The Caribbean Sea had lain open to Brión. Across it he had come on transport service. His five vessels anchored in the lee of Fourcher Island bore only half the armament of their ratings and comparatively small crews, not 300 sailors and marines in all.[8]

Commodore Aury for his part had not expected to find his path converging so quickly with that of his dearest enemy. But with Dr. Gual only seven miles distant he might well expect Brión

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[6] The translation corrects a misspelled name. The reference is not to Admiral Brión or to Admiral Brown of Buenos Aires but to the latter's brother, John Brown, commanding the Argentine corvette *Unión; cf.* copy of note to Castlereagh annexed to San Carlos to the *Corte*, Jan. 28, 1818, AGS, Estado, Legajo 8289 *(anterior); Louisiana Historical Quarterly*, XXIII (1940), 118.

[7] Statement of Renovales [New Orleans, Sept. 16] annotated to Sept. 18, document 30 of *copia* 4 annexed to Apodaca to Estado, Oct. [31], 1818, AGI, Estado, México, Legajo 13. Perhaps Renovales meant 10,000 rather than 100,000 as the number of MacGregor's muskets.

[8] Memorial, Aury Papers; Charleston *City Gazette*, in New York *Advertiser*, s-w., July 10, 1818.

to concede that the new interest of a commodore on the Caribbean coast of New Granada would not now conflict with an admiral's interest on the Atlantic coast of Venezuela. Brión indeed did welcome a reconciliation that would reduce a homeless commodore to such subordination as the commodore had refused in Aux Cayes. Addition of Aury's three squadrons would increase the Venezuelan force to a formidable fleet. The admiral did not wait to hold a conference. To Margarita Island he wrote at once, on May 11, reporting Venezuela's good fortune in adding Aury's cruisers to his own.[9] Delay of one day would have let him tell further of fortune. To St. Bart's on the twelfth and to the anchorage of Fourcher came the Argentine brig *General San Martín* with Captain Stafford, whose piracies with the brig *Patriota* the commodore had sought to legalize by a commission predated in Galveston. The log of the *San Martín*[10] records that the two allies of Texas conferred aboard the *Congreso*. It has nothing to say on May 12 of Dr. Gual, whose return to the education of his pupil may be perceived in words that Aury set down later as follows:

> After the Americans had taken Amelia, my intention being to gather the men of Granada scattered throughout the Antilles, and having written and sent different vessels to prepare officers for that purpose, I had given as point of rendezvous St. Bartholomew's and the Mona Passage in order to collect those vessels that were in the Windward Islands. I found Admiral Brión with the forces of Venezuela anchored at Fourcher, a little island near St. Bartholomew's. In consequence of the measures I already had taken for acting on the coasts of New Granada, I proposed to the admiral to join with him, relinquishing command to him, and to act together three or four months in order to destroy the Spanish navy, which was operating on the coasts of Venezuela, [and] to take one or two ports; with the sole condition that, after effecting what I proposed, the government of Venezuela should take measures or should join certain land forces to mine and to those that I expected to collect by the measures that I previously had taken, to operate on the coasts of New Granada.[11]

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[9] Blanco and Azpurua, *op. cit.*, VI, 384, 385.

[10] Text in Savannah correspondence, Aug. 20, in New York *Evening Post*, s-w., Sept. 2, 1818.

[11] Memorial, Aury Papers.

Aury's message to Brión disclosed a weakness in the position wherein the commodore and Dr. Gual were presenting themselves. They lacked a port of their own. They lacked an army. Yet Commodore Aury did not acknowledge error and futility. He offered to Admiral Brión little more than such auxiliary service as the Liberator had rejected in Aux Cayes. In return he would exact the glory of Granadine reconquest that the Liberator was intending for himself. Instead of making a definite reply the admiral procrastinated, "finding fault," until he had persuaded the piratical Stafford to desert his patron and to join his Argentine brig to the Venezuelan squadron. Then on May 16 the admiral sent aboard the *Congreso Mexicano* a message whereby, said Aury, "he gave me to understand that his government perhaps would not subscribe to the conditions that I had made him. Seeing that I had met again the same person as in Aux Cayes, with the same attitude, the same spitefulness, etc., I determined to follow my plan; and one day later I set sail at daybreak with four vessels of my squadron."[12]

Across the morning wind of May 17 sailed four vessels of Fernandina toward St. Bart's, seven miles away. Out of the morning loomed the canvas of a Spanish squadron. Six warships from Cuba and Grenada were hunting for Admiral Brión and his half-armed, half-manned vessels. Now what should Commodore Aury do? He knew what Admiral Brión would have done, that opportunist doctrinaire. Commodore Aury seized upon the day that to him opened opportunity for patriotic service. He sent one swift vessel to warn the six-fold Venezuelan squadron, which retired down the wind toward Saba. The Spaniards followed cautiously as Commodore Aury also retreated to leeward. Night came without an engagement. Morning revealed the enemy near at hand but not less cautious than before. A few hours the royalists cruised in doubt. Then back they sailed discreetly to the Five Islands.[13]

Commodore Aury had saved the Venezuelan squadron from destruction. Now Admiral Brión could return to the transport duties that had earned him from the Liberator the title, "Savior of his Country." Commodore Aury was left to complain that he

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[12] Memorial, Aury Papers.

[13] New York *Advertiser*, s-w., July 10, 1818; London *Courier*, July 1, 30, Aug. 6, 1818; Codazzi, *op. cit.*, 269.

himself received not even thanks for aid lent at Fourcher and at Saba. The admiral did deign, at least, to accompany Aury to the Mona until Five Islands Channel should be free of the enemy. In the Mona the republican squadrons found Commodore Joly with five cruisers and several prizes. The *Atrevido* (Captain Nicolas Limburg) had in convoy the 5-gun schooner *Romano*. This warship from Cuba, being separated from her companions on the way to St. Bart's, had surrendered to the *Atrevido's* Mexican flag without a fight.[14]

Aury at Fourcher Island had offered to Brión the aid of his cruisers. Brión in the Mona accepted the offer. The doctrinaire strengthened the Venezuelan squadron; the opportunist weakened the force of a personal rival. As in the case of Captain Stafford the admiral presented to Commodore Joly and to Joly's captains the advantages they would gain by joining a navy with a country, ports and admiralty court of its own. On May 21 he incorporated with his squadron four of the five auxiliary cruisers that had awaited Aury in the Mona. "That is the way," said Aury, "that the admiral treated me three days after the valuable services that I had just done for him."[15] Of the five auxiliary commanders only Captain Limburg remained faithful to Aury, but with the *Atrevido* came the warship prize *Romano*. Joly, the pirate whom Admiral Brión had posted as such, led the desertion. Bernardo Ferrero abandoned Aury's own *América Libre* to command a schooner again in Venezuelan service. Dr. Gual aboard the *General San Martín* sailed next day[16] not as a deserter but bound on a loyal mission to the continent by way of Haiti and Jamaica.

To Commodore Aury in the Mona remained the brigs *Congreso Mexicano* and *América Libre* and the schooners *Atrevido, Cazador, Guerrero* and *Romano,* with republican crews totaling not 300 men. The schooner *Eclair* off the coast of Cuba with a crew of eighty-four, the hermaphrodite brig *Belona* still assigned to New Orleans, a dozen small schooners that might be recalled from the Gulf, all these promised the commodore a naval force far greater than that with which two years earlier he had sailed from Aux Cayes. For the moment he had no more men than

[14] *Bell's Weekly Messenger*, Aug. 9, 1818.
[15] Memorial, Aury Papers.
[16] New York *Evening Post*, s-w., Sept. 2, 1818.

before and he had no port. Yet he had a plan. He sent the *Atrevido* to report to Dr. Madariaga in Jamaica.[17] He sent his other consorts to cruise. On June 19, seventeen days behind the *Atrevido*, the *Congreso Mexicano* anchored off Kingston.[18] Next day the brig set sail. Four warships joined her at a sea rendezvous, convoying two new prizes. Then the reunited squadron steered out to the southwest into the emptiness of the Caribbean Sea. On July 4, early in the morning, seven vessels lay in the lee of black cliffs that guard the entrance to Old Providence harbor.[19]

The mass of basalt that is Old Providence tops a peak of the submerged mountain range that crosses the Caribbean Sea from Jamaica to the Mosquito Coast of Nicaragua. Black columns rise from coral lagoons that surround the 6-mile length and the 2-mile breadth of the island. Through breaks in that palisade beaches join tinted water to green grassland that slopes up to forest-clad rock aspiring nearly 1,200 feet above the sea. Against the green of field and pasture and forest, square-built white houses gleam above dull rock and gleaming beach. Aloft on one black cliff that towers forty feet from white surf, white within a veil of green lurk the square-built ruins of a Spanish fort.

That fort, known to Spaniards as Santa Teresa, stands not on Old Providence but on Santa Catalina, a 300-acre wilderness of rock and of forest, separated from the larger island by a sandy flat and an artificial channel. Spaniards built the fort in the old days, after they had expelled Lord Warwick's Puritan colonists in the year 1641.[20] Once and again the British buccaneers, Edward Mansfield and Henry Morgan, retook and briefly held Providencia and Catalina, which the Spaniards had "so well fortified with forts and batteries round it as might seem impregnable."[21] The name of Providence went to live again the Bahamas. Catalina and Providencia acknowledged Spanish rule during a century. Occupied again by the English, again in the year 1788 Old Providence and San Andrés, sixty miles nearer the continent,

[17] *Cf. Bell's Weekly Messenger*, Aug. 9, 1818.
[18] London *Courier*, Aug. 4, 6, 1818.
[19] London *Courier*, Oct. 9, 1818.
[20] Arthur Percival Newton, *The Colonizing Activities of the English Puritans* (New Haven, 1914), *passim;* John Winthrop, *History of New England* (2 v.; Boston, 1853), I, 268, II, 33; Edward Johnson, *Wonderworking Province* (Andover, 1867), 171.
[21] Alexander Oliver Oexmelin, *Americaensche Zee-Rovers* (Amsterdam, 1678; American editions depend on the first (1684) London edition, *Buccaneers of America*, translated from a Spanish edition, whence the Hispanization of the author's name into Exquemelin or Esquemelin; reference is made here to the edition of New York, 1891, Howard Pyle, editor), 132-137, 195-207; *Dictionary of National Biography*, XVI, 1015, XIII, 914-916.

with their British planters and English-speaking slaves, came again under Spanish domination.[22] From the Mexican dependency of Guatemala the islands passed in the year 1803 to the viceroyalty of Santa Fé de Bogotá.[23]

In Old Providence only a civilian magistrate represented royalist government; the few soldiers of San Andrés fell victim to the War to the Death in the year 1816.[24] A story is still told of Henry Morgan's treasure chests in a cave of Old Providence.[25] Commodore Aury's secretary was to express in 1822 a different value, as follows:

> I will repeat . . . that the Island of Providencia in times of peace is an insignificant possession, but that under present circumstances it is very important for the Republic; that if unfortunately the Spaniards should happen to establish themselves there and make an arsenal of it, the commerce of Colombia would very soon suffer great losses.[26]

"We could heartily wish," the Lord Protector of England had written in an earlier century, "that the Island of Providence were in our hands again, believing that it lies so advantageously in reference to the Main, and especially for the hindrance of the Peru trade and Cartagena, that you might not only have great advantage thereby of intelligence and surprise, but even block up the same."[27] In similar terms Louis Aury in February of 1816 had presented the virtues of Old Providence to the council of Aux Cayes. Hindrance of the Perú trade and thereby liberation of Chile was the object of designs that Dr. Madariaga, now fifty-two years of age, had cherished during ten years against the Isthmus. "Canon of Chile" they called this churchman in Kingston,[28] although his cathedral chapter had been that of Caracas. News had reached Jamaica early in 1818 that an army of free Argentina was pouring down upon the Spanish defenses beyond the Andes. An earlier victory in Chile was to be duplicated in a battle that should be decisive. If Dr. Madariaga had

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[22] Caballero y Góngora to Valdés, March 1, Oct. 9, 1788, AGI, Audiencia, Santa Fé, 117-2-1.

[23] Alberto M. Candioti, "La Vida Aventurera de Luis Aury," in *El Tiempo* (Bogotá), April 7, 1940.

[24] *Louisiana Historical Quarterly*, XXII (1939), 1052-1053.

[25] Eduardo Posada, *Apostillas* (Bogotá, 1926), 356-357.

[26] Perú de la Croix to (Montilla ?), Old Providence, June 29, 1822, in Alberto M. Candioti, "La Incorporación a Colombia de las Islas de San Andrés y Providencia," in *El Tiempo* (Bogotá), June 23, 1940.

[27] Newton, *op. cit.*, 323.

[28] London *Courier*, March 24, 1819.

but known it, word was already crossing the plains of Argentina that the decisive battle had been fought and won. Yet to maintain Chilean independence the royalists must be driven from Perú.

The European plan promised action across the Isthmus, but only in the future. Dr. Gual's visit in January and news brought by the *Atrevido* on June 2 gave Dr. Madariaga a subject for meditation. All republican states were linked in interest. Buenos Aires and Chile did not enter until the following February into formal alliance, but already their fortunes were allied. Capture of the Granadine coast as well as of the Isthmus would serve their common purpose, as General Bolívar well knew.[29] So Dr. Madariaga in Jamaica abandoned, as he confessed, the part of logic. He took up instead the part of republican righteousness. He assumed possibility as fact. He acted without authority from his native land or from the land of its liberation.[30] Upon arrival of the *Congreso Mexicano* off the port of Kingston he gave to Louis Aury a commission from the allied governments of Chile and Buenos Aires.[31]

The quasi-royalist inhabitants of Old Providence made no objection to this change of allegiance, which Commodore Aury announced to them on July 4. On the following day an armed force from the squadron took possession of the ruined Fort Santa Teresa. Through a channel among coral pinnacles a resident pilot guided the vessels to anchorage in the harbor. The blue-and-white flag of Buenos Aires, not yet bearing the symbol of a flaming sun, flew above new republican department. Louis Aury declared private property inviolate.[32] The "commander-in-chief of the forces destined to operate on the coast of New Granada" issued a proclamation on July 10. He announced his duty. He invited brave foreigners to join him. He commanded the captains of his Mexican squadrons to quit the Gulf and report at Santa Catalina within two months.[33] He wrote to Joseph Sauvinet in New Orleans,[34] whence other schooners as well as the *Belona* might come to him. He wrote to General Lallemand, the French raider of Texas, inviting formation of a cavalry corps for service

[29] *Cf. Cartas del Libertador*, II, 405, 406.
[30] Candioti, "La Vida Aventurera de Luis Aury," *loc. cit.*
[31] *Boletín de Historia y Antigüedades*, VII, 346-348.
[32] London *Courier*, Oct. 7, 9, 22, 1818.
[33] Charleston *City Gazette*, Sept. 14, in New York *Evening Post*, s-w., Sept. 30, 1818.
[34] "C" to madame Dupuis Aury, Nov. 18, 1818, Aury Papers.

beyond royalist coasts.[35] He gave official notice to the government of Jamaica that republican authority resided in Old Providence. In Kingston on August 25 Dr. Madariaga wrote to Bernardo O'Higgins, republican Director of Chile, "Sixty days will not pass by before, God willing, I shall be able to tell you, Panamá is free, and ours are the ports of independence, which we have conquered for ever."[36]

The port of Aury's independence opens toward the west, guarded on the east and south by Old Providence and on the north by Santa Catalina. Henry Morgan's memory is preserved in crags on Morgan Head, the southwestern point of Catalina, which form the features of a grotesque face leering up and out toward Porto Bello. A spine of rock extending southward from the central peak of Catalina protrudes into the bay as a flat-topped cliff rising sheer from the water. Here the Spaniards had set their Fort Santa Teresa.

> This castle was built with stone and mortar, with very thick walls, and a large ditch round it, twenty feet deep, which, though it was dry, yet was very hard to get over. Here was no entry but through one door, to the middle of the castle. Within it was a mount, almost inaccessible, with four pieces of cannon at the top, whence they could shoot directly into the port. On the seaside it was impregnable, by reason of the rocks round it and the sea beating furiously upon them. To the land it was so commodiously seated on a mountain as there was no access to it but by a path three or four feet broad.[37]

This *castillo* of Spanish times Commodore Aury repaired and renamed *Independence.* The redoubt extending behind it he called *Liberty.* The fort opposite on Old Providence was also repaired and was named *Impregnable;* its redoubt was *Death.* The fort and redoubt of *Lightning* and *Thunder* guarded the road from the southwest cove, accessible only to vessels of the lightest draft.[38] Time was found to build only huts of sticks and straw to house the men from the squadron and the 150 former British soldiers from Jamaica who came in August to reïnforce Commodore Aury. The commodore again lacked the counsel of Dr.

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[35] Codazzi, *op. cit.*, 285; Forni to Apodaca, n. p., n. d., annexed to Apodaca to Estado, Jan. 31, 1819, AGI, Estado, México, Legajo 14.

[36] *Boletín de Historia y Antigüedades,* VII, 347.

[37] Exquemelin, *op. cit.*, 199-200.

[38] Codazzi, *op. cit.*, 284-285, and Codazzi's map t.f.p. 288; *Catalina Harbor* (No. 1371), *Old Providence Island* (No. 1372), Hydrographic Office, Navy Department, Washington, D. C.

Gual. Dr. Madariaga lacked experience. Both leaders permitted their agents in Jamaica to gather men by the lure of profit in a privateersman's port. Poor shelter, scanty food and hard labor in equality with French Negroes from Haiti brought the Britons to the point of mutiny and beyond it. Commodore Aury hanged their ringleader after only a Spanish trial.[39]

In September a hurricane struck Old Providence. Huts dissolved into sticks and straw. Of all the vessels in harbor, cruisers and prizes, only the *Congreso* remained afloat, though unseaworthy. Of the others those that went on the beach might be saved; those that disputed passage with coral pinnacles were lost. Storms continued during twelve days. Then work began on what seemed a hopeless task of repair. One hundred Britons deserted into the mountain forest and raided the plantations under cover of darkess. A schooner from Baltimore entered the harbor; a company of Aury's Negroes and mulattoes seized her and set out for Aux Cayes. All the British outlaws came down one night and stole small boats in which they laid a course for the distant land of Nicaragua. Before the end of September typhoid fever had stricken most of the remaining garrison and most of the native population. Men died, and there were no men to carry them away.[40]

It was as well that General MacGregor had not appeared promptly to join with Commodore Aury and attack the Isthmus immediately after the equinox. A British warship from Jamaica, paying a friendly visit to Old Providence, found the island's total force reduced to 300 men, of whom only fifty reported fit for duty. Only two of the grounded schooners had been set afloat. Only eight barrels of salt meat remained in the storehouse.[41] But the European plan was progressing. Lord Cochrane's squadron on November 24 touched at a Venezuelan port, bound for Chile.[42] On January 7, 1819, General MacGregor arrived aboard an armed brig at New Providence in the Bahamas. On the fourteenth he sailed for Old Providence by way of Aux Cayes.[43]

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[39] London *Courier*, March 23, 24, 1819.

[40] Codazzi, *op. cit.*, 285-286; New York *Advertiser*, s-w., Jan. 26, March 9, 1819; London *Courier*, March 24, 1819; *Bell's Weekly Messenger*, March 28, 1819.

[41] London *Courier*, March 23, 24, 1819; London *Chronicle*, March 26, 1819; Codazzi, *op. cit.*, 286-290.

[42] *Bell's Weekly Messenger*, Jan. 3, 1819.

[43] Philadelphia *Aurora*, Feb. 16, 1819; London *Chronicle*, March 8, 1819.

To Aux Cayes came MacGregor with two warships and several armed transports. There too came the one man without whom MacGregor could not carry out his arrangement made in London with José María del Real, the Granadine agent who had endorsed his notes, it was said, for 27,000 pounds Sterling. This was Juan Elías López, still for want of a successor republican lieutenant-governor of Cartagena.[44] A former senator of Cartagena obligated himself to Jamaican and Haitian merchants for supplies that permitted MacGregor's expedition to set out on March 11 with eight vessels, but without the 800 men to which still absent vessels of his squadron would have raised his total force. Desertions had reduced to 394 the number of soldiers with whom, in addition to his sailors and Commodore Aury's men, MacGregor planned to repeat Henry Morgan's exploit on the Isthmus of Panamá.[45] On March 28 part of the squadron cruised off Commodore Aury's harbor.[46] MacGregor and Aury renewed ashore on Old Providence the acquaintance that eighteen months earlier they had renewed off Fernandina Entrance.

Chapter VI: San Felipe

Commodore Aury upon his arrival in Old Providence had known that three months at least would elapse before MacGregor might come to join him. He sent a vessel to take possession of San Andrés and of the Corn Islands, nearer to the Nicaragua coast.[1] He sent the schooner *Cazador* to cruise off Aux Cayes. He sent one of his brigs to cruise off Curaçao.[2] Though the hurricane soon laid him open to attack, neither Porto Bello nor Cartagena had more than ill will to send against him.[3] In the days of Fernandina the French minister to the United States had regarded Aury as worthy of hanging,[4] but the admiralty court of Old Providence proceeded in accordance with admiralty law. One of its first cases, that of a French brig with Portuguese cargo, ended with release of vessel and lading.[5] The British government

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[44] *Cf.* London *Courier*, March 25, 1819.

[45] *Boletín de Historia y Antigüedades*, III, 696; Philadelphia *Aurora*, April 5, May 4, 1819; Hasbrouck, *op. cit.*, 146.

[46] *Bell's Weekly Messenger*, June 13, 1819.

[1] London *Courier*, Oct. 9, 1818; New York *Evening Post*, s-w., Oct. 10, 1818; Codazzi, *op. cit.*, 281.

[2] *Bell's Weekly Messenger*, Oct. 4, 1818; London *Courier*, Oct. 22, Nov. 10, 1818.

[3] *Cf.* New York *Evening Post*, in Philadelphia *Aurora*, March 9, 1819.

[4] *Memoirs of John Quincy Adams*, IV, 58.

[5] New York *Evening Post*, s-w., Oct. 10, 1818.

had acknowledged, in effect, the lawfulness of privateers such as Aury's cruisers.[6] Commercial relations between Old Providence and Jamaica were of the most friendly nature.

The hurricane destroyed the resources of Old Providence. Commodore Aury restored them by his familiar method. The *Atrevido* (Captain Limburg) ordinarily carried a crew of 50 and the *Cazador* (Captain Gautier) half again as many. Desertions, followed by famine and fever in the wake of the storm, reduced the available men to 29 and 42 respectively. Nevertheless the two schooners sailed for the coast of Nicaragua. On February 24, 1819, within the San Juan River, they came upon a royalist brig (a letter-of-marque with eight 12-pounder guns and 55 men) and two royalist schooners whose forces totaled three 12- and 14-pounder guns and 28 men. The schooners from Old Providence carried seven guns in all, rating from 2 to 8 pounds. After an engagement of more than one hour the three Spanish craft surrendered themselves and their cargoes, cocoa, indigo and 900,000 pounds of dried beef. Soon it was told in Jamaica that Old Providence had prize goods for sale worth a quarter of a million dollars.[7] With a clearance from Old Providence one small vessel from Jamaica shipped a load of "Caracas cocoa" for even so distant a port as Halifax.[8]

Louis Aury in Old Providence kept faith with Dr. Madariaga and with London. The storm had reduced his force in vessels and in men, but he had gathered money and supplies to support the squadron and the army that Gregor MacGregor was to bring. On March 28 Commodore Aury and General MacGregor discussed in Old Providence the expedition for which the plan of London[9] and their own preparations of a year past had destined them. Commodore Aury refused to take part in MacGregor's descent upon Porto Bello. Dr. Madariaga's Jamaican bureau of information gave to a Kingston newspaper an explanation prepared for the printer in the following words:

> We have no hesitation in stating that certain proposals were made, and that these proposals were rejected; for they bore on their very front the marks of inconsistency and moral

[6] William Ray Manning, ed., *Diplomatic Correspondence of the United States Concerning the Independence of the Latin-American Nations* (3 v.; New York, 1925), III, 1443; London *Courier*, July 24, 1818.

[7] *Bell's Weekly Messenger*, June 13, 1819; Philadelphia *Aurora*, Aug. 7, 1819.

[8] London *Chronicle*, May 10, 17, 1819.

[9] San Carlos to the *Corte*, Oct. 30, 1818, AGS, Estado, Legajo 8289 *(anterior)*.

> impossibility. The intention of the one might have been permitted by a spirit of bold enterprise, but it was unaided by necessary prudence. The motives which actuated the other to a refusal of the proffered junction appear to have originated from cool, unbiased reflections, and precautions that were taught by old experience.[10]

Commodore Aury had money and supplies, but few vessels and only 300 men. General MacGregor, like General Mina in another year, had vessels and supplies, but no money, and desertion by unpaid soldiers in Aux Cayes had reduced his force to little more than Aury's.[11] Gregor MacGregor brought with him a mad enthusiasm acquired in London. He would not wait for other vessels of his own to arrive. He would not wait until Aury should repair the injured cruisers of Old Providence and gather more men. Louis Aury, the rebel hothead of Aux Cayes, had passed three years in a school of adversity. From Galveston, from Matagorda, from Fernandina he had learned practical lessons in discretion. Dr. Gual, if not Dr. Madariaga, had counseled him in wisdom. "Old experience" advised him now not to risk on one stroke the little that remained to him. "Reduced to this unfortunate situation," he said, "I was obliged to go seek resources for continuing the operation with which I was charged. That is why I made the expedition against St. Philippe in the Gulf of Dulce."[12]

Continuing the operation with which London had charged both General MacGregor and Commodore Aury, the vessels from Aux Cayes joined consorts awaiting them at San Andrés. On April 4, in that Granadine island which Aury's "Argentine" forces already had occupied, Juan Elías López reëstablished the independent government of New Granada. A few hours later the squadron sailed to complete its voyage across the Caribbean Sea. On April 10 General MacGregor captured the town and fortifications of Granadine Porto Bello after little more resistance than his patriots had encountered in Fernandina. Lieutenant-Governor Elías López of Cartagena assumed office as governor of Porto Bello. The bold Caribbean enterprise from which cool, unbaised reflections had deterred Commodore Aury crowned itself with success for the associate whom Commodore Aury had abandoned.[13]

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[10] Philadelphia *Aurora*, Sept. 20, 1819.
[11] Hasbrouck, *op. cit.*, 146.
[12] Memorial, Aury Papers; Codazzi, *op. cit.*, 289.
[13] London *Chronicle*, June 18, 1819; Hasbrouck, *op. cit.*, 147.

Throughout the Caribbean and the Gulf of Mexico other associates of the commodore now were scattered. Admiral Brión was in Margarita Island preparing to carry battalions of British legionaries to the continent. Captain Stafford, his Argentine brig stolen by mutineers, had presented himself to his new admiral without a ship. Commodore Joly and his Venezuelan squadron were cruising along the coast of Haiti, enforcing the admiral's paper blockade. The Venezuelan flagship of Commodore Beluche lay off St. Thomas Island. Captain Northrup from Galveston was hunting prizes near to the Bahamas under the revolutionary flag of Uruguay. Captain Mitchell of Cartagena was preparing piratical barges to raid Spanish shipping off the Mississippi mouths. A Spanish secret agent headed an equivocal establishment in Galveston Bay. General Mina was dead of a royalist bullet. Freed from old associations and his old search for a port of his own, Commodore Aury carried out a new plan that he himself had formed. Sixty men, convalescents scarcely suitable for service, Aury assigned to garrison duty in Old Providence. The brig *Congreso* and two schooners, nearly the entire effective naval force of Old Providence, made ready on April 28 for departure on the morrow.[14]

In Porto Bello that night no guard was posted. General MacGregor's patriots gave themselves up to such entertainment as offered itself. The general and his officers slept until after dawn. At six o'clock in the morning Governor Elías López was dead in his bed, a victim of the unopposed counterattack by which the royalist garrison regained possession of their town. General MacGregor threw a mattress from his bedroom window, jumped down and swam to safety aboard one of his vessels. The bold enterprise from which cool, unbiased reflections had withheld Commodore Aury ended in disaster greater than that of MacGregor's surrender, or of Aury's own surrender, in Fernandina.[15] On that same day of April a republican squadron of three vessels manned by 240 adventurers sailed northward from Old Providence. Past the leering monster on Morgan Head went Louis Aury bound on an errand of which Henry Morgan, if not Louis Brión, might heartily have approved.[16]

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[14] Codazzi, *op. cit.*, 290.

[15] London *Chronicle*, June 23, 1819; Philadelphia *Aurora*, July 1, 1819; *Bell's Weekly Messenger*, July 4, 1819.

[16] Philadelphia *Aurora*, Sept. 20, 1819.

Over a course 600 nautical miles in length Commodore Aury led his squadron northward, around the point of the mainland and toward the west past the fortified towns of Trujillo and Omoa. On May 10 forested mountains rose dark before him at the farther end of the Gulf of Honduras. Royalists surrendered the lookout on the site of the village named now for Edward Livingston of New Orleans, but not before a messenger had escaped up a hidden waterway. The forest seemed to rise unbroken on the mountains, but Commodore Aury knew as well as did the royalist messenger that a river led invitingly inland. Two days passed in preparation of small boats for 140 men. Commodore Aury left 100 men to guard the squadron and the captured watchtower. On the morning of May 13 the wall of mountain and forest opened before the approach of his boats. Louis Aury led his mosquito fleet into the throat of the Río Dulce.

Wide as 300 yards, as 200 yards, deep as the Mississippi in its lower course the stream came pouring through a slot in the forest. Rocky palisades straightened themselves beyond the river's mouth into precipices rising sheer 300 and 400 feet. The channel curved; the canyon closed about the voyagers. From waterside grottoes of white limestone, where the river gurgled as it passed, to the cliff top that would have dwarfed the masthead of the *Congreso,* white rock hid itself in the green of foliage. Trees grew upward from unsuspected crevices, among vines that looped down from crevices above. Monkeys raced and chattered on the face of the cliffs. Parrots clung to the air with wingtips, croaking, squawking, hiding their gaudiness against the clarity of the sky.

Only the current of the stream opposed Commodore Aury's advance. Yet day was well gone when small boats nine miles distant from their sea crept out between sloping banks into the light of the Golfete de Dulce. Here men might rest upon their oars, breathe again a larger air and turn to behold vast meadows of marshland that ripple in any wind and beckon men onward, westward, between other distant moutains. Through the river's channel, through the marsh and through the night Commodore Aury guided his fleet. The marsh fell away into darkness at each hand. Between dim banks of earth men of Old Providence pursued the last mile of their river journey. Dawn brought them to the point where the stream, scarcely 200 feet in width at its

uppermost bend, receives the overflow of Lake Izabal. There, from the waterside of lake and river, walls built of unhewn boulders rise to form a fortress like Santa Teresa of Old Providence. During a century and a half the castillo of San Felipe and its redoubt had guarded Lake Izabal from Henry Morgan and his successors. Its defenders were alert now, warned by the royalist messenger from the coast. They opened fire with heavy guns and with muskets.

Under fire the republicans of Old Providence made a landing. Under fire they assaulted first the redoubt on the landward side and then the castillo itself. The garrison fled and left Commodore Aury to enjoy the first success that this general of Mexico had yet attained on land.[17] His success proved to be more profitable upon the water. Under the guns of the fort there lay at anchor a schooner and two falouches, all loaded with indigo. The schooner alone carried 200 bales, worth perhaps $700 each in distant markets. From on board the schooner the commodore of rowboats took also $50,000 in cash.

From the town of Izabal beyond the lake the royalist commandant had fled with a treasure in money, but treasures of the warehouses rewarded privateersmen for a 20-mile voyage across open waters. Commodore Aury returned to San Felipe with cochineal and other precious prize goods. The privateersmen took care to publish later to the world that they had captured half a million dollars in money and also indigo to twice that value. Yet even the truth would have been enviable. The commodore estimated that his personal profit from his raid amounted to $200,000. In addition, it was said, he increased his forces by enlisting adventurous men of Izabal.[18]

Down the Río Dulce went Commodore Aury. With vessels now richly laden he sailed from the Gulf of Honduras late in May. He hoisted the British flag as he approached a Spanish armed brig, the *Marte* (in English, *Mars*). Then under the flag of Buenos Aires he gave battle. Taken by surprise the brig surrendered and became straightway the largest of Commodore Aury's cruisers.[19] Commodore Aury gave the *Marte* into charge of Sévère Courtois; a Haitian who had commanded a supply vessel in General Bolívar's first expedition of 1816.

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[17] Philadelphia *Aurora*, Sept. 20, 1819; Codazzi, *op. cit.*, 292.
[18] Philadelphia *Aurora*, July 8, 1819; Codazzi, *op. cit.*, 293; Memorial, Aury Papers.
[19] Codazzi, *op. cit.*, 293-294.

From an island base off British Honduras[20] Commodore Aury sent out his cruisers to hunt in familiar seas. Off Aux Cayes on July 3 the *Criolla* (Captain DeWater) captured a North American brig coming with a Spanish-owned cargo from Cádiz for Vera Cruz. A week later the *Marte* took a full-rigged ship from New York. Captain Courtois took Spanish property from a French ship without detaining the carrier. Then he made a prize suitable for addition to the squadron, the big Spanish brig *Tribuno*.[21] Leaving only the *Marte* to cruise off the coast of Cuba, Commodore Aury sent home his schooners and their prizes. Late in the month of July he himself arrived off the harbor of Kingston. There he learned news of the world from which he had been three months absent.[22]

General MacGregor had escaped from Porto Bello with his squadron and the remnant of his army and had gone first to San Andrés and then to Haiti. At Aux Cayes he had found the three ships newly arrived from England for which he had been unwilling to defer his raid on the Isthmus, and aboard them 350 Scottish and Irish soldiers. Pending the arrival of other vessels he had proposed to unresponsive officers a privateering campaign, and also another capture of the Isthmus and the digging of a Panamá canal.[23] In Margarita Island orders still awaited him for the services that General Bolívar too trustfully had expected him to perform in Venezuela for the cause of liberty.[24]

In Margarita Island the foreign legionaries from England and Ireland had duplicated the first experience of Commodore Aury's Jamaican recruits in Old Providence. Half-starved, half-naked, they had fallen victims to epidemic disease. Many died, of disease, of exposure, of hunger, despite the efforts of Admiral Brión and the expenditure of many thousands of dollars, which the now-penniless admiral had borrowed on his credit. The Margaritan general and governor, Juan Baptista Arismendi, refused to add a force of native Margaritans to the foreign legion organizing under direction of a general from the continent. Under

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[20] Philadelphia *Aurora*, July 8. 14, 1819; *Bell's Weekly Messenger*, Oct. 3, 1819.

[21] New York *Advertiser*, s-w., Oct. 5, Nov. 2, 1819, Jan. 14, 1820; *Bell's Weekly Messenger*, Nov. 14, 1819; Codazzi, *op. cit.*, 294-295.

[22] Philadelphia *Aurora*, Sept. 20, 1819; Memorial, Aury Papers.

[23] New York *Advertiser*, s-w., Aug. 3, Sept. 14, 17, 1819; Galabert to Casa Astrearena, Sept. 21, 1819, AGI, América en General, Legajo 5.

[24] *Cartas del Libertador*, II, 44, 60.

military arrest Arismendi set off for San Tomás de Angostura (modern Ciudad Bolívar), the Venezuelan republican capital on the Orinoco.[25]

Commodore Joly, who recently had married into the family of Arismendi, returned to Margarita from a springtime cruise to learn that his new relative the governor had suffered imprisonment by officers of the central government to which the admiral gave all his loyalty. The former pirate therefore tried to take command of the Margaritan fleet. Above his own flagship he raised the French colors, as symbol of his opposition to the British party ashore. Admiral Brión made his own position clear by raising the British flag above Venezuelan vessels manned by British sailors and marines. The battle of symbols came quickly to an end in victory for the admiral. Joly surrendered and in turn passed under arrest. When the fleet sailed in mid-July to carry legionaries to a raid on the royalist coast to the eastward of Caracas, Commodore Stafford sailed as squadron commander under command of Admiral Brión. Commodore Joly remained a prisoner in Margarita.[26]

Admiral Brión's expedition supported a military attack intended to draw away the attention of royalist commanders from General Bolívar. The Liberator's military success in lands of Venezuela distant from the royalist coast was permitting him an advance into the uplands of New Granada. There in August of 1819 he re-liberated Santa Fé de Bogotá. The operations of which Brión's expedition was a part brought battle frightfully near to Angostura, where sat the Venezuelan republican congress. While General Bolívar and his army should remain absent in New Granada only a small Venezuelan force protected the capital from attack by royalists. Fear aroused among the congressional deputies such opposition as even Venezuelans had offered to the Liberator in Aux Cayes. General Arismendi, the prisoner of Angostura, was set free to take part in a political revolution and to appoint his relative Joly, the prisoner of Margarita, as admiral in succession of Brión. Commodore Aury's Granadine friend Zéa, vice-president of Venezuela, intended that a separate congress should be established now in Bogotá. Other

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[25] Hasbrouck, *op. cit.*, 115-120.

[26] New York *Advertiser*, s-w., Aug. 13, 24, 1819.

members of government complained that a Venezuelan army and its commander-in-chief had been absent on Granadine service when Venezuela's need was great.

Yet the genius of Simón Bolívar prevailed over these new difficulties as in the past it had prevailed over others. The Liberator left the highlands of New Granada in charge of his Granadine general, Francisco de Paula Santander, and returned from military success to a success in statesmanship as notable as it was to be impermanent. He won Zéa first to his side and then went with his new ally before the congress. Deputies who had hated him in absence received him in person as their honored chief. They joined him to create a new republican empire. Instead of a separate congress in Bogotá the Liberator urged a union of all republican government. "One body with two heads," he said, "what could it do?"[27] So in December of 1819 the republican provinces of Venezuela and the newly liberated highlands of New Granada were fused by the fire of one mind into the Republic of Colombia.

Admiral Brión instead of Commodore Joly became admiral of Colombia. The party of the opposition in Venezuela retained a force that acted not in favor of Joly but in favor of Commodore Aury. Of Aury's old friends only Zéa of Aux Cayes and Roscio of Galveston wielded great influence among the statesmen of the continent, but Dr. Gual was on the way back to a position among the highest, and many persons viewed Dr. Madariaga's Jamaican recommendations with respect. A petition on behalf of Old Providence came to consideration in November. Pressure exerted itself upon General Bolívar, who had more reason now than in late years to concede forgiveness to a former ranking officer in the Granadine navy who possessed much needed vessels.[28] To Colonel Montilla, late of Cartagena and Galveston, the military commander of Colombia entrusted in December a military expedition to be carried out with Brión's fleet. In the orders that General Bolívar sent to Montilla, Article 19 reads as follows:

> If Captain Aury desires to incorporate himself with the navy of Colombia in class of auxiliary, you will admit him in the grade that he desires; but if he would do so as a Colom-

[27] *Cartas del Libertador*, II, 120.
[28] *Cf. Cartas del Libertador*, II, 123-124.

> bian officer he will be necessarily in the class of captain, and you may forward the petition he may make to the Supreme Government for its approval or disapproval.[29]

Thus the rebel of Aux Cayes received a sort of forgiveness from the man whom in Aux Cayes he had flouted. Although Simón Bolívar of Venezuela, not Louis Aury of Cartagena, had liberated Bogotá, an enviable reputation might still be gained in driving the Spanish armies and remnants of the Spanish fleet from the Caribbean coast of Colombia. The influence of friends had won for Commodore Aury and for the flag of the Argentine such a position as Aury had asked in Aux Cayes for himself and for the flag of Mexico. Yet what had Louis Aury to do with Simón Bolívar, the Venezuelan? Never in three years past had the commodore of Cartagena and Old Providence yearned for a post subordinate to that liberating foreigner who like the Venezuelan admiral had condemned him in Aux Cayes to wander homeless across the sea.[30] Commodore Aury's business was not with Venezuela. It was with his liberated New Granada.

Louis Aury's good fortune had come too late. Louis Aury's willingness to serve the Granadine government had been recognized, and conditionally, by the Republic of Colombia. To direct the supreme republican government a temporary president of Colombia had been chosen. It was Simón Bolívar.

Chapter VII: El Choco

Privateers of revolted Spanish colonies blockaded the coasts of the Americas as in the time of Napoleonic wars privateers of France and warships of Great Britain had blockaded the coasts of the Americas and of Europe. Commodore Joly's first cruising under the flag of Venezuela added seizures to those already offending the commercial world at the time when a newspaper editor from Washington arrived in Venezuela as a special commissioner of President Monroe.[1] Resultant reports coming back to Washington permitted one well-informed person to comment as follows:

> The agent has protested in strong terms against the paper blockade of that government. General Bolívar justifies it by the precedent furnished by Great Britain, in the late

[29] *Boletín de Historia y Antigüedades*, VII, 348-349; *cf.* Memorial and date of Statement of Account, Aury Papers.

[30] *Cf.* Aury to Santander, July 12, 1820, in *Boletín de Historia y Antigüedades*, VII, 361.

[1] *Cf.* Lewis Hanks, "Baptis Irvine's Reports on Simón Bolívar," in *Hispanic American Historical Review*, XVI, 360-371.

war with Napoleon, and calls it a retaliation for the former blockade of the royalist General Morillo at Cartagena, and refuses to relinquish it. Admiral Brión says that the British send an armed force to demand restitution, the Americans only remonstrate; and that it is no use to take any more British vessels who break the blockade, but that the Americans are fair game, because they only talk and write.[2]

The chief North American contribution to the South American cause, the Argentine privateer navy of Baltimore, divided itself in the year 1818 into two fleets. One remained under direction of the Argentine "consul-general" in New York and cruised against Spanish trade. The other assumed the flag of the Oriental Republic (Uruguay) to raid both the commerce of Spain and the commerce of Portugal and Portuguese Brazil. One filibustering schooner from New York distributed Oriental commissions at St. Bart's.[3] Argentine privateers found a welcome for themselves in Margarita Island and a welcome for their prizes in Margarita's Venezuelan prize court. The Oriental vessels of Baltimore, agreeing to cruise only against Spanish shipping and Spanish cargoes, were accepted by Admiral Brión as a squadron auxiliary to his own. Portugal complained of Oriental cruisers to the current league of nations. Admiral Brión outlawed the commissions of St. Bart's. The world became edified by stories of battles between Oriental cruisers from Five Islands Channel and the Venezuelan and Oriental cruisers of Margarita. Yet one squadron of four vessels under Admiral Brión's own flag found time to destroy British commerce between Jamaica and Cuba. The British warship that went out to explain Great Britain's theory, newly revised, of international law captured Brión's squadron commander, an Englishman, in the act of smuggling Spanish prize goods on the coast of Jamaica.[4]

General Bolívar in Venezuela believed that the threatened liberal revolution in Spain had caused reactionary France to fear for her own safety and to disapprove continuation of royalist efforts in the Americas.[5] The Conservative government in London turned almost Liberal in regard to transatlantic affairs; early in 1820 it advised Spain to cede the Floridas to the United

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[2] Baltimore *Patriot*, in New York *Evening Post*, s-w., Dec. 26, 1818.

[3] *Louisiana Historical Quarterly*, XXII (1939), 1093-1094.

[4] New York *Advertiser*, s-w., Jan. 4, 14, 1820; *Bell's Weekly Messenger*, Jan. 23, Feb, 6, 1820.

[5] *Cartas del Libertador*, VI, 157.

States before the United States should seize the provinces without British opposition.[6] President Monroe in Washington pursued an "arithmetical method of negotiation," seeking to gain at once the Floridas and the friendship and trade of South America. When hope of the Florida cession appeared lost, early in 1820, he horrified his secretary of state by proposing to withdraw arms even from governmental arsenals for benefit of the new Republic of Colombia. He was quoted as telling the resident Venezuelan agent "that he would give Venezuela everything" and "treated him divinely." An Anglo-American veteran of the Texas raids thereupon carried another nonpolitical cargo of arms to Venezuela with the qualified blessing of the State Department.[7]

The fortunes of royalist Spain had so far declined that the Spanish commandant of Porto Bello thought proper to protect himself by diplomacy rather than by trust in untrustworthy arms. So Commodore Aury in July of 1819 found awaiting him at Kingston a letter from the Isthmus. The royalist officer was offering to bring about reconciliation between Old Providence and Spain. Aury could foresee a profit of $200,000 in Spanish property ready to be sold for his own account in Old Providence. He knew that reconciliation with the Bourbon government of Spain would permit him return to an easy life, perhaps even in Bourbon France. Instead of accepting the offer from Porto Bello he and Dr. Madariaga agreed that his new riches should be used in equipping more warships for liberating the Caribbean coast. "Can many persons be named," Aury was later to inquire, "who, having such an opportunity, would have acted as I did? I do not believe that they are numerous."[8]

While Dr. Madariaga announced to the newspapers of Kingston that prize goods might again be bought in Old Providence, Commodore Aury sailed southwestward to his island. The leering likeness of Henry Morgan welcomed him to a port that had changed its appearance in the months of his absence. Cruisers from off the beach floated in the harbor. Resident laborers had raised on the northeastern hill a house to shelter Commodore Aury and the general headquarters, a solid house of wood from the sawmill such as also had been used for building a church

[6] San Carlos to San Fernando, Feb. 24, 1820, AGS, Estado, Legajo 8288 *(anterior)*.
[7] *Cartas del Libertador*, II, 157, 175, 211; *Memoirs of John Quincy Adams*, V, 43-50.
[8] Memorial, Aury Papers.

and a hospital. Along the beach extended the dwellings of a village, henceforth to be called Izabal, where privateer officers grown wealthy from the loot of another Izabal soon were installing mulatto ladies from Jamaica and Haiti.[9]

The sale of prize goods progressed with a result perhaps as gratifying to the republicans as to Jamaican merchants. Dr. Madariaga took advantage of the new trade between the islands and paid a visit there. New resources made possible now an increase in the naval force of Old Providence, and only a sufficient army remained lacking. To fill this persistent need a proclamation issued from general headquarters on August 17 signed by "José Cortés Madariaga, minister of the republics of Buenos Aires and Chile, and Louis Aury, commander-in-chief of the forces of Santa Catalina and Old Providence." This proclamation, like the one of thirteen months earlier, addressed itself to wandering European adventurers. In honesty and frankness it stands perhaps without a rival among compositions of its kind and of its epoch. It promised only a welcome and a place in the army or squadron. It confessed that "circumstances" would order the operations of Commodore Aury's forces.[10]

Back to Jamaica went the Canon of Chile while General MacGregor was preparing to quit Aux Cayes on another naval experiment. MacGregor sailed in September against Río Hacha, one of the small royalist ports on the Cartagenan coast that Commodore Aury knew he himself might take but could not hold. As at Porto Bello the port surrendered after momentary resistance. As from Porto Bello the victor soon was fleeing in the disgrace that again his own incompetence brought upon him. He returned to Haiti with only twenty men. Nearly a year he lingered at Cap Haitien, sending out a swarm of small vessels under privateer commissions of his own.[11]

If fugitives from MacGregor's band found their way to Old Providence, it is notable that few British names appear in the records of Commodore Aury's establishment. Captains DeWater, Courtois, Limburg, Thomas and the rest were joined by Jean-Bâtiste Soutalet, an old experienced "pirate" who had succeeded Captain Ferrero aboard the *América Libre;* Henri Alause, who

[9] Codazzi, *op. cit.*, 347.

[10] Philadelphia *Aurora*, Nov. 24, 1819.

[11] Hasbrouck, *op. cit.*, 151-156; New York *Advertiser*, s-w., Dec. 14, 17, 1819, March 3, June 13, Sept. 15, 1820, Feb. 3, 1821.

had commanded a Mexican cruiser out of New Orleans for Joseph Sauvinet; Joseph L'Ange, once skipper of an armed smack on the coast of Texas; Gianni Fabiani, likewise from the Gulf; even Dominique You, late of Barataria and the Battle of New Orleans. Reports reaching the Antilles in November, 1819, accredited Old Providence with a naval and military personnel of 780 men instead of the 300 who had survived mutiny, disease and famine in the preceding year. The navy consisted of three brigs, four schooners and two falouches. Two brigs were said to be coming from New Orleans, where a copy of the August proclamation had arrived late in October. By the first months of the new year the fleet of Old Providence had so far increased as to permit division into one small squadron for home defence and another of fourteen vessels for offense on the sea.[12]

Commodore Aury was planning a response to the call that he and Dr. Madariaga daily expected from friends on the continent. Yet the call did not come. He put the big prize brig *Tribuno* into commission. He collected arms, munitions and stores for a three-months' voyage with his major squadron. The hermaphrodite brig *Belona* arrived from New Orleans. Aury dared not send away many privateers on a cruise such as two of his schooners had made in September along the coast of Porto Bello. While he awaited a summons to patriotic naval service his operations as a privateersman were paralyzed. Thus he complained:

> New Granada was aware of my readiness and of the naval force that waited with me; and when its capital Santa Fé and other provinces had been recaptured I expected it to command me whither to bring them. The necessity was, as it is, urgent, but the profound silence has been greater. That made me believe that there was no thought of valuing or accepting my labors; and, fearing lest my voluntary operations on the coast, dangerous through lack of prearrangement and the impossibility of communicating with the leaders, might result in indiscreet zeal in some cases, misfortune in others, and perhaps the disapproval of the government, I suppressed my feelings and the vehement desire that animated me to contribute to the common welfare of my fellows, and in particular of New Granada, although the prospect presented itself in the most tempting light. . . .
>
> Admiral Brión knows that I maintain a navy that figures as the terror of the enemy. He knows also that under the patronage of the Republics of Buenos Aires and Chile it is

[12] New York *Advertiser*, s-w., Nov. 12, 1819; *Bell's Weekly Messenger*, Feb. 6, 1820.

> operating off the coast of New Granada. Equally well he knows that I was the head of the navy in the Granadine states, before and after they succumbed. He knows, in short, that my chief department is this island, fronting on all the leeward coast of Cartagena. Then why were these operations never assigned to me in order that I might for my part contribute to the recapture of the territory? Why should I be considered as a worthless thing and my services scorned, though better tested than many? Why is authority still granted to him over whom my moderation passes in silence?[13]

The republican cause had progressed indeed so favorably on the continent that General Bolívar had enlarged his army with Granadine contingents to a point where he was scarcely able to maintain it. Yet now he sought to gain more levies of men from New Granada and at the same time Granadine contributions of money to support the army and, most of all, to pay for imported muskets. Upon General Santander, remaining in Bogotá as resident vice-president of Colombia, the duty fell of raising $1,000,000 for the year 1820, of raising regiments of slaves whose military service should be repaid with freedom, of persuading the former insurgents of New Granada to send veteran soldiers and muskets for use in Venezuela and on the border. Unwillingly, and against the will of provincial commandants, General Santander sent Granadinos away to a Venezuelan leader who had required them from "a country where nothing is easier than to hate a Venezuelan."

The Granadine officer who governed Zéa's native Antioquia, Cartagena's provincial neighbor on the south, complained of the danger in which the withdrawal of soldiers left him from the royalist army on the coast. Colonel José María Cancino, commandant of Cali in El Chocó (the region of Darién) likewise feared for his existence. General Bolívar never had feared for the safety of El Chocó. On one side stood the mountains of Antioquia; on the other lay the lonely Gulf of Darién, the wilderness of Panamá and the rain-drenched shores of the Pacific. Only a small company of royalists kept command of El Chocó's southern highlands. Through the midst of El Chocó's lowland jungles the deep and leisurely Atrato River bore no Spanish boats either to or from the Caribbean. El Chocó was "a land of fevers, of Negroes and of Cancino."[14]

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[13] Aury to Santander, July 8, 1820, in *Boletín de Historia y Antigüedades*, VII, 352-354.
[14] *Cartas del Libertador*, II, 115, 219; *Boletín de Historia y Antigüedades*, VII, 353.

To assertions of that colonel that the defenders of El Chocó lacked arms for their own defense, the president of Colombia sent back word to Vice-President Santander, "Cancino has never contributed anything or bought any muskets. Let him dig gold out of the ground if he cannot get it otherwise." Requisitions continued to ascend to Bogotá. The Granadine vice-president continued to fill them, complaining meanwhile of one thing and another until the Liberator of his native land rebuked him with a word, "Your correspondence contains only negations and censures." But news then came down from the mountains that was neither censure nor negation. It was news of Perú and news of Old Providence. General Bolívar replied to the vice-president, "The news is all very good, though it needs some measure of confirmation."[15]

News of Old Providence had come in February to Cali, but not up the Atrato River from the Caribbean. It had ascended the Pacific water, brought to the Bay of Buenaventura by the frigate *Andes* of Lord Cochrane's Chilean fleet. Unaware that General MacGregor had been driven from Porto Bello in April, the British admiral of Chile had sent one of his strongest warships to keep faith with MacGregor and Aury. When MacGregor in Haiti was planning a new expedition the *Andes* on September 17, 1819, took possession of an island in Panamá Bay. There she waited for a while, but failed to embark a victorious army led from Porto Bello by a victorius Scot. The French commodore of two Argentine warships, having raided the coast of California, was even then sailing southward to join an international squadron and advance against Callao[16] without aid from General Lallemand in Texas.

The impatience of Gregor MacGregor had stolen away from Louis Aury one chance to make a new name for himself as a Granadine patriot. Yet the influence of London acting by way of Chile prevailed over the madness of an agent. The coming of the *Andes* to Buenaventura, and his own differences with the Liberator, caused Colonel Cancino in February of 1820 to give to his young lieutenant Joaquín Acosta two letters and various public papers for delivery to "Admiral Luis Aury of Provindencia." Without specific authorty from Bogotá,[17] without any authority

[15] *Cartas del Libertador*, II, 162-164, 188, 225.

[16] *Bell's Weekly Messenger*, Jan. 23, 1820; London *Chronicle*, Sept. 8, 1819; Philadelphia *Aurora*, Oct. 16, 1819; *cf.* Codazzi, *op. cit.*, 317.

[17] Santander to Aury, Sept. 1, 1820, in *Boletín de Historia y Antigüedades*, VII, 363.

whatever from the Liberator whose government seemed to be oppressing El Chocó,[18] Cancino invited the former commodore of Cartagena "to renew his services in carrying out and protecting the commerce and the commissions of the government." He informed the commodore of "the ease and freedom with which he may approach the mouths of our river to enter into communication with the Supreme Government and to treat at the same time with the commander of the frigate *Andes*, arrived from Chile." To Commodore Aury himself he left "consideration of the favorable results that will come to New Granada and to the entire cause from the now assured communication between the squadrons of the north and the south by the Isthmus of Darién."

Most of all the Granadine colonel charged his messenger to bring back arms and munitions from that former Granadine commodore whose patrons he believed to be wealthy speculators of London. Forty thousand musket cartridges, or the equivalent in lead and powder, he required; 500 muskets for his army of 500 men; twelve pieces of artillery heavier than ever had fired from the deck of Aury's largest vessel; seamen; naval officers; rigging; ship carpenters and calkers for four vessels; with infantrymen and 400 cartridge belts and also ten military musicians complete with instruments. Down the Atrato River Lieutenant Acosta bore his colonel's hopes and at the river's mouth found means of continuing his voyage by sea.[19]

Meanwhile Commodore Aury had made ready against a summons from Venezuela or, wanting that, for a new enterprise of his own. Jamaica learned late in November, 1819, that Old Providence intended an attack "against some of the Spanish ports, supposed near the Bay of Honduras." Omoa and Trujillo invited attentions of an augmented naval and military force. The Indian king of the Mosquito Coast had offered his friendship, and support.[20] Commodore Aury was unaware that Admiral Brión, Colonel Montilla and an army of British legionaries were preparing an expedition in which the clemency of General Bolívar already had granted him a place; that his old friend Zéa was setting out by way of the Antilles toward diplomatic duties overseas; that a messenger was descending the Atrato River. He held his squadron in port and detached only the *Atrevido* and the

[18] *Cf. Cartas del Libertador*, II, 224.
[19] *Boletín de Historia y Antigüedades*, VII, 350-351; Memorial, Aury Papers.
[20] *Bell's Weekly Messenger*, Feb. 6, 1820; *Boletín de Historia y Antigüedades*, VII, 353.

schooner *Diana* (Captain Soutalet) to cruise the waters of Haiti. A North American brig, with cargo from Spain to Havana, was captured off Santiago de Cuba, taken to Old Providence, tried in the admiralty court and released after condemnation of her cargo. Late in December the *Atrevido* fell prisoner to a Haitian gunboat, was accused of smuggling and carried into Aux Cayes.[21]

Captain Soutalet, entering the roads of that port, found there a brig from the auxiliary fleet of Margarita, the *Perla Oriental,* commanded by the notorious Captain Nattá.[22] The old quarrel between admiral and commodore flared up between captain and captain. Captain Nattá even threatened to carry the *Diana* to Margarita Island. At the same time the brigantine *Gavilán* of the Venezuelan (now Colombian) squadron captured off Trinidad de Cuba a hermaphrodite brig from the coast of Africa with a cargo of ninety Negroes. On the returning voyage to Margarita the bad condition of the cruiser and a lack of provisions caused the captor to bring his two vessels to Old Providence. There the captain of Colombia found no harbor pilot to welcome him. While the prize remained in the offing the brigantine felt her way into port, touching twice on coral pinnacles.

Commanding aboard the *Gavilán* came the Frenchman Lacaze, *alias* Bernardo Ferrero, who had deserted the *América Libre* and Commodore Aury in the Mona Passage to take service under Admiral Brión. Coming now to ask favors of the patron whom he had injured Captain Ferrero damaged his cruiser beyond immediate repair. Commodore Aury granted him aid strictly in accordance with law. The prize was brought into port. Captain Ferrero had no choice but to transfer himself from his unseaworthy brigantine to his slaver brig. Provisions were not to be had except at what seemed an exorbitant price. There were port fees to pay. Captain Ferrero had no money. Commodore Aury offered to buy Africans to serve as soldier slaves. Captain Ferrero had no other means of acquiring cash or credit. He permitted the Argentine prize court of Old Providence to condemn his Colombian cargo of Negroes, who otherwise might have entered the army of General Bolívar. Further exactions of republican law Captain Ferrero recounted to Admiral Brión as follows:

> It was at last the moment of my departure when new embarrassments arose through a letter, genuine or fabricated,

[21] New York *Advertiser,* s-w., April 28, 1820; *Bell's Weekly Messenger,* March 26, 1820.
[22] *Cf.* Manning, *op cit.,* III, 2158.

> of Soutalet, captain of the schooner *Diana*, which said he had been taken and carried prize by Captain Nattá to Margarita, by Your Excellency's order and by an authority that was said to be that of reprisal. I found myself seized, my vessel brought back and embargoed, and myself haled before a court-martial, whose humanity declared me free and authorized me to sail . . . . I have reason to believe that all these difficulties are merely the result of some resentment that I do not understand, since among the thousand vexations that General Aury has made me suffer, of which I refrain from telling Your Excellency at greater length, he insulted me, my flag and my government, replying only unwillingly to my salute the day of my arrival. I will also say that he lured away my crew before the end of my cruise; that I was forbidden, in that land where floats the flag of freedom, to embark any man whatsoever among those of my former crew, who were ashore; and that at the moment of my sailing I was subjected to a most minute inspection by two officers and six soldiers, who came aboard me by order of the general.[23]

Captain Ferrero had come asking favors. Commodore Aury treated him in accordance with law. The master of Old Providence, still a logical Frenchman though a pupil of adversity and of Dr. Gual, had failed to learn fully the lesson that his teachers had set him. To a lawful, logical and malicious conclusion he carried his hatred of Admiral Brión, his restentment of neglect and the bitterness of his heart. Unaware that an order by General Bolívar had opened opportunity to him on the continent, Commodore Aury on his island permitted himself an act of revenge. Into the hands of Captain Ferrero now he delivered messages that in the course of time came to the hands of the Colombian admiral. He bade farewell to his guest. He turned to other matters. He gave to his admiralty court the case of a ship from New York captured in the San Juan River. Her cargo proved to be of North American ownership; the court freed the ship to return to royalist Nicaragua and to discharge her lading.[24] Commodore Aury observed the law of nations. It was only the law of his own interest that he had not yet construed.

Forces unknown to Commodore Aury were accumulating on the continent to his Granadine advantage to the disadvantage of General Bolívar's peace of mind. News of the concession made

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[23] Ferrero to Brión, May 29, 1820, *Documentos ineditos* (manuscript collection of Dr. Vicente Lecuna, Caracas), v. 5, Prizes of the *Gavilán*.

[24] New York *Advertiser*, s-w., June 13, Aug. 11, 1820.

to Aury in the Liberator's order to Colonel Montilla still failed to reach Old Providence, but first news of other favors in prospect arrived on March 11, 1820, with the coming of Lieutenant Acosta. Thus Commodore Aury learned that his adopted country was recalling him at last to its aid.

CHAPTER VIII: HONDURAS

March is a month that smiles upon the Caribbean Sea. In March of 1820 Commodore Aury proudly showed Lieutenant Acosta from Cali the island of his possession, "the superb fortresses that the buccaneers had built," now repaired and rearmed, and the village of Izabal with its stout wooden dwellings ranged along the beach, its church, its hospital, its warehouses, its shops, its comforting cafes. He took the officer to his own house on the hill, where five slaves attended their master. He invited his officers and their mulatto ladies to an army-and-navy ball in honor of their guest and of victories won for New Granada.[1] Yet on second thought the invitation brought from El Chocó seemed not to be all that might have been expected by a former commodore of Cartagena whose friends in Venezuela had been working in his behalf. It came only from a provincial commandant. It came only as an informal letter, not a formal *letra de oficio*. It asked Commodore Aury to bring his forces to a coast where no harbor could be found for the sixteen cruisers and transports of his fleet and where only the San Blas Indians, of uncertain loyalty, would receive him. Consideration suggested, moreover, that the jungles of the Atrato River enjoyed little of military importance. Commodore Aury put his problem and his decision into words as follows:

> Notwithstanding the lack of authenticity in this dispatch, which it seemed ought to be from the Supreme Government or at least guaranteed thereby; nothwithtsanding that the navy could not operate in the interior, and notwithstanding all the advantages that the king of the Mosquito Coast had offered me, I decided to go to El Chocó with the forces under my command, and I actively undertook the necessary preparations.[2]

The squadron was prepared for an expedition. Impressment of Captain Ferrero's sailors and purchase of ninety Negroes had

[1] *Boletín de Historia y Antigüedades*, III, 695, VII, 351-359; Inventory, Aury Papers.
[2] *Boletín de Historia y Antigüedades*, VII, 353.

further increased the armed force of Commodore Aury. A little vessel set out to collect more men and provisions at San Andrés Island, on the route to the coast. Horses grazing in the pastures of Old Providence, trained for use by Aury's dragoons, were put aboard the *Belona*. It was nearly mid-April. Only three days remained before Commodore Aury would sail to take up Granadine service again. Then a vessel arrived from Jamaica and with it a letter from Dr. Madariaga.

That letter dashed to earth all Louis Aury's soaring hope of Granadine conquest. The liberating expedition of Brión and Montilla, intended as half of a military vise to close upon the royalists of Maracaibo Bay, had gone against the coast not of Venezuela but of New Granada. To Río Hacha, where bones of MacGregor's soldiers still rolled in the surf of the beach, Admiral Brión had brought in March his squadron and Colonel Montilla's Irish legionaries. The expedition into which General Bolívar had granted entrance to Commodore Aury had carried itself out without the commodore, even without his knowledge. A Colombian army was advancing toward a junction with Montilla. None could say when Brión might remove his headquarters farther down the coast to Aury's own state of Cartagena. Commodore Aury commented thus:

> These events, contradictory to my desires, obliged me to call a council of general officers. . . . They decided that . . . our naval forces ought not to be risked near those of Admiral Brión, who, ever animated by an odious emulation, is in opposition to those forces, believing that their triumphs will obscure his glories; that it is prudently to be feared that at the moment I should operate in the territory there would be a beginning of disputes subversive of good order and of good faith, all tending toward prejudice to the arms of the Republic and ending perhaps in dangerous sections and quarrels; that for that reason and because neither the government of Venezuela (to whom a letter has been written) nor that of New Granada has communicated any order, for operating on the aforesaid point, that would indicate how I might have communication with the interior (without which the squadron would risk everything), it would seem best, the council said, to wait for the said orders or for the first opportunity of asking them from the sovereign government of Bogotá.[3]

[3] *Boletín de Historia y Antigüedades*, VII, 354-355.

Commodore Aury had accustomed himself to accept advice from his officers. In this case the advice harmonized with his own preference. Brión and Montilla had invited Dr. Madariaga to return to the continent; the Canon of Chile might be able to rearrange this situation. Meanwhile Honduras awaited attention. The commodore explained his perplexity to Lieutenant Acosta, who returned up the Atrato regarding the chief of Old Providence as *muy Granadino*. Commodore Aury posted a garrison with the brig *Congreso* and a minor cruiser to guard his domain from the Spanish navy. In mid-April, with fourteen armed vessels, Commodore Aury sailed to liberate Central America.[4]

On April 21, at six o'clock in the morning, the watchtower of Trujillo signaled to the town at the foot of the bay that vessels were approaching along the coast from the eastward. The commandant of the royalist stronghold between beach and hillside sent officers again to inspect the trenches and fascined breastworks extending five and seven deep from the elevated and fortified plaza to the ravines three miles distant on each side. At eleven o'clock the vessels were reported to be fourteen in all. The entire manpower of Trujillo, whites, Indians and Negroes, soldiers and civilians alike, took the places to which duty assigned them.

Trujillo on the coast of Honduras had been expecting since the previous May an attack such as that which Commodore Aury had made to succeed so well at San Felipe. Newspapers of Jamaica had published, four months past, the privateersmen's intention to return. Trujillo's defenders had given new strength to their fortications. An extra battery stood atop a hill dominating the beach and the town.

Around the eastern point of the bay, where rose the watchtower, around and into the anchorage came twelve of Louis Aury's warships, each one flying the blue-and-white flag of the Argentine with its new symbol of a flamboyant sun. Beyond cannon shot they anchored in line, protected at sea by two scout vessels. At four o'clock the commandant of Trujillo received a republican officer bearing under flag of truce Commodore Aury's demand for surrender within one hour. Trujillo refused communication with a rebel whom General Morillo four years earlier had posted as a French pirate.[5] The commandant accorded no answer to the

[4] *Boletín de Historia y Antigüedades*, III, 695-696, IV, 148; Memorial, Aury Papers.

[5] *Cf.* Corrales, *op. cit.*, II, 332; Antonio Rodríguez Villa, *El teniente general Don Pablo Morillo, primer conde de Cartagena, marqués de la Puerta* (3 v.; Madrid, 1908-1910), II, 588.

messenger, who returned to his ship. One hour, two hours, a dozen hours and more the commodore of Old Providence waited at anchor off Trujillo for a reply to his ultimatum.

At half past five next morning he received it doubly in the raising of the Spanish flag and in the defiant morning cannonade. Commodore Aury presumed to return the salute from his flagship, discreetly out of royalist range but now under the pacific white flag. He waited. He fired another signal gun and got no answer. Then in place of the flag of truce he raised to the masthead of his flagship the banner of Buenos Aires. Into line of battle he maneuvered his squadron. At half past nine the vessels of Old Providence went into action.

Back and forth before the plaza cruised four schooners, four pailebotes (schooners without topmasts) and a one-masted falouche, firing upon masonry and earthworks and meeting fire in return. The commodore with Captain DeWater's *Belona,* another brig and a big two-masted falouche coasted down along the beach toward the eastern end of the defenses and chose a spot for landing. Here was no royalist battery to hinder. Artillery fire from the brigs pushed back the defenders from one entrenchment to another while 400 armed republicans with fifteen horses gained the shore. Here the engagement progressed in classic style under direction of republican officers trained in the armies of Napoleon. Aury's infantrymen advanced behind a barrage of grapeshot to the fourth entrenchment. Resistance caused them to retreat. The barrage was renewed, was extended. The royalist force fell back to the fifth line. Again the men of Old Providence advanced. Even up to that fifth line, beyond which the guns of the squadron could not carry, a platoon of infantrymen and the mounted dragoons pushed their way. Then royalist musket fire drove them again to security with their main body under cover of the third parapet.

By two o'clock both sides ashore had established themselves in their respective trenches. A lull succeeded. The cruising schooners withdrew from before the plaza. Half an hour later an encircling movement, too long delayed, made itself evident at the rear of the town. The schooners attempted distraction by returning to the attack, but encirclement had failed to take the defenders by surprise. Musket fire at the rear fell silent. The

encircling republicans circled back along the way they had come. The schooners joined the brigs off the eastern beach. In an action extending over five hours the plaza had received little damage from bombardment. The invaders had retained only three out of seven lines of eastern breastworks.

Commodore Aury and his European officers had done their best, and their best had not sufficed to take Trujillo. Their vessels had suffered more than the fortifications ashore. Night came on without change in the position of the squadron. During hours of darkness royalist defenders heard the sound of hammering as shipwrights labored to repair destruction wrought by royalist gunnery. At daylight the fleet of Old Providence was seen withdrawing from the bay. On the beach lay a few sacks of biscuit and a few bottles of liquor. There remained also the fifteen horses, which Commodore Aury had not troubled to reëmbark since he had others aboard the *Belona*. The royalists had met with the loss of two men killed and one wounded. They were pleased to estimate republican casualties and fatalities at forty.

Trujillo and its commandant had been too much for a privateersman who was the terror of the Spaniards upon the sea. Yet Commodore Aury could say that only half his plan had failed. Out he took his squadron in column around the point past which he had entered the bay. Each vessel in passing discharged a spiteful volley of musketry against the watchtower. Two days longer the vessels lay cruising on the horizon. At sunrise of April 25 they were no longer visible from Trujillo.[6]

At Omoa, 100 miles or so to the westward, Commodore Aury's squadron came into view toward nightfall of that day. A stronger town than Trujillo, Omoa stood on the flank of a mountain, protected on the beachside by a high-walled fortress to which drawbridges gave the only access across a moat. Stronger than Trujillo to resist attack, Omoa confessed a fatal weakness in prospect of a siege. Again the followers of Louis Aury and of his ambitions landed on the beach of Honduras, protected by a curtain of grapeshot. Again and again they advanced against the unapproachable fortress, in which the townsfolk had taken refuge. Again and again they fell back, carrying with them their losses. Throughout one week they sought to frighten the de-

[6] *Gazeta de México*, June 17, 1820; Codazzi, *op. cit.*, 381.

fenders into surrender. Yet in those seven days only one royalist had been even slightly wounded. Attack failed, as might have been expected by anyone with experience of how courageously Creoles, even royalist, could fight upon the land. The privateersman who had gained his only knowledge of warfare upon the sea brought himself at length to take the advice of his military experts.

One elevated position, unfortified, commanded the position of the fortress. Under protection of naval artillery Commodore Aury put ashore two 18-pounder guns, each of which weighed two tons. He ordered the ascent of those masses of iron. The height that royalists had thought unscalable by siege guns became his artillery platform. The 18-pounders were mounted ready to be trained upon the fortress of Omoa. On May 5 demolition was about to begin. But the ten-days' siege of Omoa came in the end to a failure no less than that of Trujillo. On May 5 a supply vessel of the attacking squadron arrived from St. Thomas Island. Her commander passed into the hands of Commodore Aury a message that changed into joyous expectancy the desperation ruling the soldiers, the sailors and the commodore of Old Providence. Republicans abandoned their siege of Omoa. Their larger brig, made unseaworthy by royalist gunnery, they set afire. The landing party reëmbarked, leaving to the royalists the two heavy guns they had carried to the height. On May 6 the commodore aboard a swift schooner led his retreat from Omoa. His squadron passed out of the harbor and again was lost to royalist view.[7]

To Omoa had come a supply vessel from St. Thomas. To St. Thomas had come in April Francisco Antonio Zéa, Louis Aury's old friend of Aux Cayes, who had been vice-president of Venezuela and of late Venezuelan vice-president of Colombia. General Bolívar had spoken of Zéa as "the father of the republic" and thought of him indeed as his own successor in the presidency. But as soon as the Venezuelan president-general of Colombia had left the vice-president to his own devices the Granadine Zéa had taken the Orinoco government under his own direction. Again as in Aux Cayes he chose the Liberator's enemies as his friends. He persuaded the congress to grant him additional authority. General Bolívar was far distant on the border of Venezuela and

[7] *Gazeta de México*, June 17, 1820; Aury to Santander, July 8, 1820, in *Boletín de Historia y Antigüedades*, VII, 355; Codazzi, *op. cit.*, 382-383; Memorial, Aury Papers.

New Granada. To General Santander, the other and Granadine vice-president in Bogotá, the Liberator on May 30 complained of Zéa as follows:

> He has done things that you could not imagine, . . . always, always, always to please everybody, against my express orders. . . . You must be vice-president . . . of the republic, since Señor Zéa lacks stability for directing a people like ours, especially in revolution. Destroy this letter; because I do not want Zéa to have reason for resentment against me, since I am very grateful to him although I recognize his faults.[8]

Before leaving Angostura on his mission overseas Zéa had gained "an unlimited and absolute authorization from the congress to do anything that he *may believe* proper for the republic."[9] In St. Thomas Island he thought it proper for Granadinos, it was said, that he should appoint Commodore Aury to act on the Granadine coast "as admiral of their navy and general-in-chief of their armies." Into the hands of Aury's captain, Sebastián Boguier, he gave an official commission to such effect with directions to deliver it to the commodore in Old Providence. Aury's resident agent in St. Thomas sent word of these events by the supply vessel that reached Omoa on May 5. Therefore back to Old Providence hastened Commodore Aury with enthusiastic military officers.[10]

Not all the privateer commanders followed their commodore on his southern voyage. The siege of Trujillo and Omoa had taught them the difference between privateering and warfare. The schooner *Victoria* deserted her commodore and transferred her commission to a passing vessel. Dominique You took his schooner *Guerrero* back to the Gulf of Mexico, trusting to whatever prize court might be at Galveston Bay before returning to Old Providence. Captain DeWater ran off to the Gulf with the *Belona* and the remaining cavalry horses.[11] The *Belona* raided British shipping. A warship from the Jamaica station went out in pursuit. After some months of piracy the runaway privateer brig returned to Old Providence. She reported there that the captain responsible for involving Commodore Aury with the Brit-

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[8] *Cartas del Libertador*, II, 181-182, transcript from the undestroyed original.

[9] *Cartas del Libertador*, II, 232.

[10] Aury to Santander, July 8, 1820, in *Boletín de Historia y Antigüedades*, VII, 355.

[11] Villavaso to the captain-general, May 30, 1820, declaration of Antonio Yuz annexed to same to same, July 18, 1820, AGI, PdeC, Legajo 1945; *cf. Bell's Weekly Messenger*, Aug. 6, 1820.

ish government had gone aboard a prize vessel to Margarita Island to make his peace with Admiral Brión.[12] Other vessels suffered shipwreck. One disaster cost the life of Adrien Aury, the one relative whom madame Victoire had sent from Paris to join her brother, the commodore.[13]

With only half the squadron, if with more than half the men, that he had led from his island in April Commodore Aury returned to Old Providence and waited for Captain Boguier and the commission sent by Zéa. During nearly two months he looked out impatiently past Morgan Head. He had it in mind to send a vessel to St. Thomas when news came to him that Captain Boguier too had lost his life. Likewise the commission from Zéa was lost. The letter that Louis Aury in his disappointment wrote on July 8 bears even in its Spanish text the mark both of Louis Aury's French thought and of a military council's decision. Corrected perhaps by his French secretary, Louis de la Croix, translated perhaps by that Rafael de Mérida[14] of whom General Bolívar was to say that in his veins coursed poison, the letter includes Spanish grandiloquence and philosophy of the French Revolution. But it was the logical mind and the bitter heart of Louis Aury himself that directed to General Santander an explanation (not too minutely detailed) of the commodore's own activities in the Gulf and the Caribbean and a complaint against his enemy Luis Brión.[15]

Louis Aury complained and Louis Aury explained, but Louis Aury put the significance of his letter into a handful of words. "Through lack of sufficient infantry," he said, "I am physically unable to attack and hold any point." Thus the commodore of privateers confessed to the vice-president of his own country the difficulty under which ever since the council of Aux Cayes he had been laboring. Yet he had artillery, far more than enough for arming his vessels. He had supplies. He had even money. He offered to General Santander infantry equipment for 1,500 men, who should be provided however by New Granada. He offered to add his own credit to the credit of the republic for

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[12] Memorial, Aury Papers.

[13] Family Council, Aury Papers; *cf.* Codazzi, *op. cit.*, 406.

[14] Mérida's presence with Aury at this time is shown by correspondence in *Boletín de Historia y Antigüedades*, III, 696, and *Gazeta de México*, June 17, 1820. Before the revolution Mérida had been a secretary of the royalist government in Caracas.

[15] *Boletín de Historia y Antigüedades*, VII, 352-360.

gathering supplies in addition. He held himself ready, with his squadron and with his men, to make an unaided attack against the Granadine coast on either side of the Magdalena's mouths. From the government of the highlands he asked only authority to act before Admiral Brión should snatch away his one last chance.

Once again Louis Aury had come too late. Communication had opened between the interior and the Caribbean coast beyond the Magdalena. Admiral Brión had set up his admiralty office in Savanilla, within the borders of Cartagena. Before the offer from Old Providence reached Bogotá the course of the Magdalena was free and Colonel Montilla's men were threatening the royalist position toward the east. General Bolívar, from his headquarters on the Venezuelan border, was driving his victorious army through Cartagena toward the sea.

The letter by which General Santander in Bogotá replied on September 1 to the petition from Old Providence contained all that Commodore Aury could have desired except the requisite of authority. It was necessary, said the Granadine vice-president of Colombia, to refer the proposal to the President-Liberator. For the rest the letter approved all that Commodore Aury had done, or tried to do, or offered to do, for the sake of the republic. At the same time the vice-president forwarded Aury's petition to General Bolívar. With it went recommendations of acceptance expressed in the querulous, half-insolent style that the Granadine statesman employed in correspondence with his Venezuelan superior. No longer did foreign vessels and men come in numbers to aid in the liberation of South America. Admiral Brión's alien sailors chafed under restraint and revolted against labor with little pay or none at all. General Santander, himself *muy Granadino*, imperfectly concealed his wish to strengthen the Granadine party of Colombia at the expense of the Venezuelan party and of Admiral Brión. His opinion that command of the Caribbean coast might well be given to Commodore Aury he set forth as follows:

> I ask you to . . . augment our ruined navy with what Aury offers. . . . I appreciate the circumstances that previously have arisen with regard to His Excellency the Admiral, but . . . Colombia is of great extent, it has three departments, far-lying coasts, a multitude of ports. All these

> are considerations favorable to what Aury asks. Whatever may be your decision it will serve to govern me in this matter if you will have the kindness to order it communicated to me.[16]

With a second sneer for Brión and for his ruined navy the vice-president two days later wrote to the Liberator as follows: "What shall you do about Aury? He must desire in good faith to belong to a republic in order not to be treated as a pirate. For our part we should gain much by availing ourselves of his vessels. I am expecting a decision favorable to everyone and not disagreeable to our good Admiral, who has suffered reverses of fortune."[17] The Liberator took no action on either letter.[18] Therefore General Santander felt free on October 24 to appeal, in most formal terms, to the minister of war, colleague of that vice-president to whom the congress of Angostura had given authority despite "express orders" from the President-Liberator. Santander enclosed copies of Aury's letters and of his own dispatch of September 2 with the following comment: "As I have received no reply whatever and as Señor Aury's requests seem to me to be of much importance I transmit the duplicate of the said communications and of my reply for such action as may be thought suitable."[19]

Commodore Aury had promised to have his vessels in readiness by the time when the messenger should return who had carried his letter up the Atrato. He kept his promise. Early in October the wandering *Belona* came in to rejoin the squadron. The *Guerrero* returned from the Gulf of Mexico. Late in the month General Santander's letter of September 1 reached Old Providence. Aury dispatched a vessel with a letter to Colonel Montilla, now commander of republican forces at the Magdalena mouths. The message reached its destination on November 11. It was the last day of October when Commodore Aury went aboard his flagship *Congreso*. With seven other vessels he sailed from his island to become again a patriot of the continent. On November 18 the former chief of Cartagena's navy looked again on the low-lying coast from which once with friends and enemies he had fled to the sea.

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[16] *Boletín de Historia y Antigüedades*, VII, 362-364.
[17] O'Leary, *op. cit.*, III, 56.
[18] *Boletín de Historia y Antigüedades*, VII, 364, 365.
[19] Archivo Nacional (Bogotá), CCCXXV, 670.

Chapter IX: Santa Catalina

Admiral Brión's ruined squadron and Colonel Montilla's Venezuelan soldiers and Irish legionaries occupied Río Hacha before the middle of March, 1820. Soon they removed their headquarters to Barranquilla and its port of Savanilla in half-liberated Cartagena state. In Margarita Island the admiral had been accused of trying to starve the mutinous Irish into submission. On the coast he maintained them with supplies purchased on his own dwindling credit. On the coast also he tried without success to impose his seniority upon Montilla. The Irish rebelled again against Montilla; Montilla and the Venezuelan troops complained of Brión.[1]

Again the admiral reminded the Colombian president of the "immense debts" that he had incurred for the sake of the Republic. Yet Colombia lacked money even for current expenses; the last $1,000 in Angostura had gone to the veteran of the Texas raids in part payment for muskets. No sympathy for the admiral could be expected from the congress, which had granted everything to Zéa but in which voices raised themselves again against the Liberator and his favorites. General Bolívar again asked money from Bogotá to cover Brión's more pressing obligations. The debts remained still unpaid. Yet the admiral's loyalty was undouted. Brión with his debts, with his arrogance, with his paranoid delusions of grandeur, had been faithful to his trust from a government that was the Liberator. So too (during three years past) had Mariano Montilla. For an advance with the admiral's vessels against the citadel of Cartagena General Bolívar issued orders to Montilla. In an accompanying letter of July 21, 1820, he combined ancient pain and more recent assuagement in the following lines:

> Permit me to say that no field so well befits you as that of Cartagena, where you suffered and brought suffering to others, your friends and enemies. So, then, you shall liberate the land that your hand brought to defeat. Because I am heartily your friend and because I am heartily reconciled with you, for you I desire this glory.

The Liberator was holding fast, as always, to his doctrine of perfect loyalty to a republic that he himself had created. He put aside old differences and accepted from old enemies new serv-

[1] Hasbrouck, *op. cit.*, 172-184; *cf. Niles' Weekly Register*, XIX, 46.

ices in the common cause. The admiral held fast always to a doctrine of perfect loyalty to Simón Bolívar and therefore to the republic. He did not practice his doctrine upon individual republicans. The supreme command that he exerted within his own naval department he had sought to extend over military and civil leaders and thus had gained the ill will of all. Simón Bolívar could not fail to see at last that Luis Brión, despite his asset of personal devotion, represented a liability to the state. Even Simón Bolívar felt that the admiral was "asking much." He tried to repay in gratitude the debt that Colombia could not pay immediately in money. So in his letter to Montilla he continued as follows:

> I am much pleased with our good Admiral, and so I beg you to treat him with the greatest possible consideration and regard, but you are the one responsible for the duty that under this date I confide to you. He is an excellent leader, but the sons of Colombia have need of their countrymen in order to be handled as they prefer; and so in you I place all my trust, delivering to the Admiral the trident of Neptune and the car of Colombian Amphitrite.

Thus General Bolívar protected for a few months longer a man whom he could not much longer protect. With memory perhaps of a report made recently by Bernardo Ferrero, with thought of exhortations by Dr. Madariaga (now returned to the continent) and with intent of preventing another quarrel injurious to welfare public and private, the president wrote also to Montilla these words: "If any factionary comes to the territory under your command, send him sailing away in order that he may neither molest nor embarrass the course of public affairs. The canon is crazy and should be treated as such.[2]

Royalist soldiers still stood against Montilla on land, but no Spanish vessels barred Brión's ruined squadron from advance. Cartagena's one royalist warship lay careened on the beach. Only two royalist gunboats remained in commission within Cartagena Bay. Republican armed barges blockaded Pasa Caballos and all other inland channels. The enemy had withdrawn from the height of the Popa. The republican army from the interior held the land beyond the bay.[3] On November 11 Colonel Montilla

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[2] *Cartas del Libertador*, II, 229-230.

[3] Montilla to Santander, July 14, 1820, in Corrales, *op. cit.*, II, 399.

in Barranquilla reported to General Santander that his own advancing troops had captured a position adjoining Santa Marta. He wrote also as follows:

> I venture to promise Your Excellency that within a short time the flag of Colombia will float likewise above the walls of Cartagena, since all things seem to conspire toward destruction of the usurper; for today I have received official advice from Commodore Luis Aury, aboard the *Congreso* at sea, that within two days of my receiving the advice he would come to join our squadron with four brigs and four schooners of war.[4]

Commodore Aury kept his promise with a delay of only five days. On November 18 his brigs and schooners cruised off the city that had been his own. No Spanish warships met his approach, though royalist artillery defended the seawall of the citadel and the forts of Boca Chica. Republican barges in the inland channels lacked communication with the sea. Yet the republican squadron that the commodore had thought to reinforce was absent despite the advice that he had sent to Barranquilla. "If it had not been determined," said Commodore Aury, "in conformity with the plan that the admiral always had followed, that I should not serve the Republic of Colombia, certainly I should have found a plan of operations drawn up."[5] Only silence met the home-coming of Louis Aury.

On went the commodore to Savanilla and Barranquilla and to a different reception. Republican enthusiasm greeted him there. He learned that Santa Marta, beyond the Magdalena's mouths, had fallen to the republicans and had become the headquarters of Montilla and Brión. Vice-President Santander had sent a Granadine special commissioner to establish in Santa Marta a republican civil government. In Santa Marta waited the newly chosen governor, who was Dr. Gual.[6] At Savanilla the commodore left his squadron and proceeded to Santa Marta and to the welcome of old friends. His petition for entrance into Colombian service gained quick response from the military commandant. Far from wishing to send a factionary sailing away or to guard Admiral Brión from a disastrous quarrel, Montilla acted upon the orders that General Bolívar had given him in

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[4] Corrales, *op. cit.*, II, 426.
[5] Memorial, Aury Papers.
[6] *Boletín de Historia y Antigüedades*, IV, 148, 409; Memorial, Aury Papers.

the previous December. In writing he accepted the petition of a friend who might perhaps help to free him from annoyance. To General Bolívar he sent the petition for approval.

Reconciliation was still to be effected with the admiral before Louis Aury might achieve his ambition. The implacable enemy must be placated. To the man who had taken from him in Aux Cayes the rank he had regarded as rightfully his own, to the man who had taken from him in the Mona one half of his squadron, to the man who had determined that Louis Aury should not serve the Republic, Louis Aury offered his services. Dr. Gual stood at hand with counsel for his pupil from Fernandina. Colonel Montilla's experience of the past three months lay at the disposal of his friend from Galveston. Old teachings of adversity could recall themselves to the mind of a Caribbean adventurer. In a spirit of conciliation and of borrowed humility Louis Aury took up his task.

The letter with which Colonel Montilla had given formal welcome to a Granadine patriot ended with the exhortation, *God and the fatherland!* Delicate distinction between a Granadine patriot and a Curacaoan doctrinaire appeared in the words, *God and liberty!* with which Montilla ended his *letra de oficio* announcing to the admiral the commodore's arrival.[7] Under date of Santa Marta, December 5, 1820, the dispatch ran as follows:

> His Excellency the president, in the orders that he has given me for acting on the coast of New Granada, directs me in Article 19 that, if Señor Aury should desire to incorporate himself with the squadron of Colombia in class of auxiliary, I shall admit him in the grade that he desires; and since the aforesaid gentleman has arrived and has agreed to incorporate himself in conformity with the directions of the cited article and since he possesses forces sufficient for coöperating in the blockade that is to be made against Cartagena, I inform Your Excellency thereof in order that, in whatever action you may take, you may keep in view the cited Article 19.

This warning and another dispatch proceeded to the admiral without bringing forth a reply. Finally an interview was arranged, but in that meeting, said Aury, "I gained conviction of what I assert." The admiral received him with insolence. The

[7] Montilla to Aury, Dec. 5, Montilla to Brión, Dec. 5, 1820, in Archivo Nacional (Bogotá), Guerra, CCCXXV, 182.

admiral addressed him repeatedly by a title reserved to masters of merchant ships. Commodore Aury kept his temper. At last he was willing to sacrifice his dignity to win a place in the blockade of Cartagena. "Although I offered to serve in any quality whatever," said Aury later, "and to take orders from the admiral, so that I might seize upon the precious moment that was presenting itself, . . . I could not obtain permission to be of assistance."[8] The special commissioner in a letter to General Santander took up the story as follows:

> He explained then that his object was to serve in any status whatever, that he was not ambitious for rank but only for the glory of contributing to the welfare of the nation. Brión refused everything, even to receive him in the status of auxiliary, and threatened to fire on his vessels. . . . You can believe that Brión's squadron is in the worst condition, since for a month following the capture of Santa Marta not one vessel has lain off Cartagena, which is receiving provisions. . . . Aury's vessels are bigger and stronger, and even if they offered no more than a threat the number would be of much value in the blockade. This has caused indignation to some, anger to others. To those who look ahead and calculate it gives reason to expect sinister consequences.
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> Brión, seeing himself raised to the highest grade in the navy, has grown arrogant and believes that he can do everything necessary and can stand four-square in the republic; for although he is hardworking and quite zealous he is a man without ability or comprehension and listens little to advice. That is why he is at outs with Montilla and generally disliked. The other has many admirers. He is an excellent sailor, brave officer and the terror of the Spaniards. He has better character, and although he is not a Nelson he listens to advice and asks it. If this is not remedied there is much to fear. The Spaniards know how to create and to nourish discord.[9]

In disappointment and in wrath Commodore Aury returned to Barranquilla on December 10. A truce had just been declared between republican and royalist forces. The movement on Cartagena was therefore postponed and time left to him for an appeal to Bogotá. While reports from friends and enemies were preparing for dispatch to Generals Bolívar and Santander the commo-

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[8] Memorial, Aury Papers.

[9] Castillo Rada to Santander, Barranquilla, Dec. 10, 1820, in *Boletín de Historia y Antigüedades*, IV, 148. The address of Montilla's friendly letter contained the title *(comandante)* of which the commissioner, a Granadino of Cartagena, complained when Brión used it orally in addressing Aury.

dore went on to Savanilla, the port, to send away his squadron. He found that his enemy's spite had preceded him. As Commodore Aury in Old Providence had detained Captain Ferrero's slaver prize, so Admiral Brión's orders put Aury's entire squadron at Savanilla under embargo.[10]

Accompanied by his French secretary and an Italian officer from Old Providence, Commodore Aury set out on the Magdalena. A canoe paddled by six Indians carried the voyagers up the stream, day after day, week after week, with new crews coming aboard at each day's halt. To the head of navigation went Commodore Aury by canoe and then on and up by muleback. Out he came at length into the thin air of the plain where Santa Fé de Bogotá sits ringed about by her mountains. More than a mile and a half above sea level, in the first days of the new year 1821, Louis Aury made the acquaintance of Francisco de Paula Santander.

Up the river Aury had come through a land of fevers, a land of heat, a land of Negroes, Indians and samboes, to a land of high meadows, of cooling breezes, of white men and mestizos. Sun and wind of the sea had burned and roughened forehead and cheeks of the black-browed commodore. The vice-president received him, a statesman of handsome presence, a general of division scarcely older than Aury had been in Aux Cayes, a Spanish colonial of Visigothic blondness, fair and ruddy of skin, yellow of hair and moustaches, brown of eyes.[11] In the lofty capital of his own country Louis Aury found sympathy but no aid to his ambition. For on the fifth of January came also Simón Bolívar, traveling on horseback such hundreds of miles as Aury had traveled by the Magdalena.[12] A slender, sallow man, his smoldering eyes dull now with fever and with the fatigue of his journey, wearily in the short days of the armistice the Liberator came to Bogotá.

He was tired. He was tired, he said, of disputes between army and navy, tired of directing throughout eight years a republic of ingrates, tired of being called ambitious, tired of being called usurper, tyrant, despot, and still more tired of performing executive functions foreign to his nature.[13] He came up from war

[10] Memorial, Aury Papers; Ducoudray, *op. cit.*, preface.
[11] Codazzi, *op. cit.*, 365-375.
[12] *Cartas del Libertador*, II, 299.
[13] *Cartas del Libertador*, II, 308, 325, 338.

to the peace and the revivifying air of his capital. The complaint of an old enemy awaited his coming. He was tired of disputes between army and navy, and the quarrel of his own from the days of Aux Cayes came back to him. Even in the mouth of the man who had defied him there, whose presence threatened now repayment to the admiral in the admiral's own coin of five years past, the quarrel renewed itself. The admiral, it seemed, was ambitious; the admiral was a usurper, a tyrant, a despot, performing executive functions foreign to his nature. The admiral had embargoed Aury's vessels.[14] The archives of the republic preserve a copy of the letter that the president of Colombia addressed to a former captain of New Granada, in Bogotá, on January 18 of 1821. The letter reads as follows:

> Captain Luis Aury: In spite of your efforts and without need of your services, the republic of Colombia has raised itself to the position of needing no more cruisers that disgrace their flag in all the seas of the world. Therefore you may repossess yourself of your vessels and take them out of the waters of Colombia; and with this order, presented to His Excellency Admiral Brión, you will find the port open, God keep you.[15]

The Liberator wrote as if in sudden anger. In fact he had treated the affair of Aury by dispatching nine days earlier a letter to the admiral who had threatened to fire on Aury's vessels. The general too was almost persuaded that those were enemy vessels. On January 9 he directed that Brión should offer Colombian commissions to any captains from Old Providence who, with any of those cruisers, might wish to abandon their commodore. "But Your Excellency will take care," the president cautioned his friend, "that this be not a cause of piracies and of new disagreements and disputes with foreign powers."[16] When Commodore Aury, having returned to Savanilla, sent the president's order of January 18 to Santa Marta, his messenger found there Captain DeWater, cause of piracies and of Jamaican complaints against Old Providence, installed as an officer of Admiral Brión's own headquarters.

The admiral delivered up the ships' papers but heaped Aury's messenger with abuse. The order from Bogotá had covered only

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[14] *Cf.* Codazzi, *op. cit.*, 378; Memorial, Aury Papers.

[15] O'Leary, *op. cit.*, XVIII, 25, in *Boletín de Historia y Antigüedades*, VII, 365.

[16] O'Leary, *op. cit.*, XVIII, 13, in *Boletín de Historia y Antigüedades*, VII, 365; *cf.* Washington *Gazette*, Oct. 18, 1821.

the vessels, not their crews. As Commodore Aury had treated Captain Ferrero in Old Providence, so Admiral Brión treated Commodore Aury at Savanilla. Most of the commodore's sailors he detained ashore "on frivolous pretexts." The vessels sailed out with loyal captains but with skeleton crews.[17] Not every officer accompanied the squadron. Aury's secretary, Louis de la Croix, had been ready even in Bogotá to accept the invitation that the Liberator indirectly was extending. In April, when the end of the armistice permitted attack upon royalist Caracas, General Bolívar found time to consider four letters written by La Croix in payment of favors and forwarded to military headquarters.[18] La Croix purported to expose a plot whereby Aury should help to turn the insurgent movement in royalist Ecuador to the benefit of a still unliberated Perú and away from the benefit of Colombia. This time the Liberator did not feel that news of Perú and news of Old Providence needed some measure of confirmation. The four letters went on to the care of General Santander. General Bolívar's secretary wrote of them to the Granadine vice-president as follows:

> The first thing that His Excellency asks is that steps be taken to reassure Señor Aury and to draw him to this country, either under the pretext that he will be received or by encouraging and sustaining his pretension to come with the intent of making claims before the general congress, whereby he shall be inspired with all possible confidence and shall have offers of coöperation and full protection. Your Excellency for this purpose may make use of Señor La Croix or of any other person. At the same time it would be well that other persons seek to introduce division among Aury's followers and that these latter be drawn to the service of the republic, abandoning the flag of that person and leaving him thus reduced to nullity. This means is perhaps the surest; but it requires a great fund of prudence, because it would be dangerous to let it be known that the seduction came from the government, which doubtless would frustrate the principal object of assuring ourselves of his person by the other means that are employed.[19]

By order of General Bolívar the secretary cautioned General Santander against any oversight that might disclose to any person whatever the existence of the four incriminating letters. Only surmise might say how well the vice-president obeyed that order. He had expectation of entering soon into the presidency of Co-

[17] Memorial, Aury Papers.
[18] *Cf.* Louis de la Croix to Bolívar, Jan. 22, 1821, text in Candioti, "La Vida Aventurera de Luis Aury," *loc. cit.*
[19] *Boletín de Historia y Antigüedades*, VII, 366.

lombia as General Bolívar's heir, and time was not far distant when the Liberator would call him "ingrate a thousandfold!"[20] To substitute a Granadine commodore in place of Admiral Brión would not be to the presidential disadvantage of a Granadino. Despite the secrecy imposed and impressed upon General Santander there was soon to be found among the private papers of Louis Aury in Old Providence, whether in original or in copy, "a sealed letter marked *Private*; opened, it is defamatory against General Aury, to Admiral Brión from Señor La Croix."[21]

To Old Providence Commodore Aury had returned so quickly that in March his cruisers were already assessing taxes upon Spanish ships and Spanish cargoes. In early summer his vessels respected neutral rights in the Windward Passage. One schooner deserted him and sought amnesty in Cuba, but the squadron reassembling at Old Providence in July was still a formidable force.[22] In July of 1821 no Spanish lands remained in the Americas where Commodore Aury could expect a welcome from insurgents. Yet in the liberated lands he had friends. Dr. Madariaga had died, and so had Roscio, for a moment Venezuelan vice-president of Colombia, but Dr. Gual was secretary of the treasury, soon to be secretary of foreign affairs. Granadine deputies in the new congress would favor a Granadino.[23] Even Venezuelan deputies might have small love for an arrogant man of Curaçao to whom Colombia owed money. Commodore Aury spread out before him a handful of letters in Spanish to serve as vouchers to his account. On folio sheets sewn into the form of a copybook he wrote to the congress, in French, his indictment of an enemy.[24]

The firm, round hand that is the hand of Louis Aury never stumbles in its course from the first page to the last. Accent marks scatter themselves here and there across the first pages of explanation, of complaint, of protest against Brión, always against Brión, against none but Brión. Through the story of Pasa Caballos, through the story of Aux Cayes the accent marks continue. Then, abruptly, graves and circumflexes disappear as the bitter heart of Louis Aury drives his pen into denunciation

[20] *Cartas del Libertador*, II, 335-341, VI, 231-232.
[21] Inventory of archives, Aury Papers.
[22] New York *Evening Post*, s-w., June 5, July 20, 31, Aug. 14, 1821; London *Chronicle*, July 27, 1821.
[23] Brión's successor as admiral in 1821 was José Padilla, a Granadino, whose first experience as squadron commander had been gained in the spring of that same year aboard armed barges in Cartagena Bay and Boca Chica.
[24] Memorial, Aury Papers. This first draft is not dated or addressed. Internal and external evidence indicates this as the memorial of Old Providence and not as a previous memorial said to have been prepared by Aury before sailing from Savanilla.

of the one man who had stood between him and achievement. Tragedy sweeps along the lines that present six years of endeavor, six years of successive clash and climax, with Brión implacable in each catastrophe. Through adventures and controversies the drama stalks over sea and land and climbs to Bogotá. There, said Aury, "chance brought me to a meeting with the President-Liberator, who refused my services and gave orders that I might leave when I pleased from the ports of Colombia." So the Granadino of Cartagena bowed in humility before the Venezuelan of Aux Cayes. Then he blotted out the words that he had written.

Here the narration ends. Diacritical marks reappear as the writer turns to his demands upon the congress. Seven assessments of punishment shall be made for seven diverse outrages committed upon him of late by the admiral. Calmly, judicially, logically, Louis Aury sets down the sevenfold sum of revenge that he would have against his enemy. His memorial is finished.

A stronger hand was writing the last act of Aury's drama. One scene takes place in another island. The faithful Luis Brión, at home in Curaçao, penniless, alone with his debts, was dying, at last insane.[25] The other scene takes place in Old Providence in the month of August. The sailor who would be a soldier, the commodore who would be a general, was thrown from the back of his horse. Friends carried him to his house on the hill.[26] At eleven o'clock on the night of August 30 the notary public of Izabal went up to the hill house. In the presence of the island's chief officers he "viewed the body of Louis Aury, in his house, in his bed, naturally clothed, dead to sight and to touch."[27]

Friends carried their commodore to his fortress of Independence on Catalina. Within the redoubt there, in earth that Henry Morgan and his buccaneers had trod, they buried the body of a privateersman. There they raised to his memory a French inscription to tell his virtues, his courage and his deeds.[28] In Venezuela the memories of friends and enemies lie gathered together in a pantheon engraved with many names. Old Providence in a lonely sea remembers too her commodore. The pilot chart tells how the island remembers. Against the position of a rock where ruins of a fort guard a grave the chart sets the legend, *Fort Aury.*

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[25] *National Intelligencer*, t-w., Oct. 20, 1821; *Recollections of a Service*, I, 53.
[26] *National Intelligencer*, t-w., Dec. 8, 1821; Codazzi, *op. cit.*, 404.
[27] Death Certificate, Aury Papers; *cf.* Courtois and Faiquère to the vice-president of Haiti, Oct. 15, 1821, Archivo Nacional (Bogotá), Guerra, CCCXLIII, 914.
[28] Codazzi, *op. cit.*, 405.

EDWARD LIVINGSTON'S VIEW OF THE NATURE OF THE UNION

By WILLIAM B. HATCHER

The study of the history of political thought possesses certain important values, since a definite relationship exists between theory and practice. Political theory develops out of the need and practices of its own age. Close co-ordination usually exists between the political thought and the actual political conditions of any given period. Often a theory arising out of a specific issue not only outlives the need which produced it, but determines future procedure with periodical recurrence of the same issue in new forms. No apology is necessary for the study of the background, origin, and development of such controversial questions. Equally important is the knowledge of the heritage, environment, training, and political philosophy of the men who translate the theory into action. It is they who have given immediate direction to current problems and who have exerted subsequently an influence on the course of events. In dealing with these men history has often been capricious. Seemingly, merit and enduring service have not always been its standards of measure. Men of mediocre ability have attained lasting prominence, while other men of superior talents have been overlooked and forgotten. Among those who have been largely passed over in the chronicling of events, whose vital influence gave direction to the course of history, is Edward Livingston.

The fundamental choice between centralization and decentralization, the basic conflict of nationalism versus particularism, the controversy over the respective powers of the central government and the states, antedated the Revolution itself, and in the broader sense, the question remains unsolved. During the colonial period, it was the question of determining the proper line of demarkation of authority between the home government and the colony. Following the independence of the colonies, the issue recurred periodically in one form or another, in the Kentucky and the Virginia Resolutions and in the Hartford Convention. Jealousy of any power superior to that of the states was aroused by the case of Chisholm *v.* Georgia, by the problems

of internal improvements at national expense, and by the tariff question of 1832. Later, jealousy gave way to fear that the Union and slavery were incompatible. When the actual crisis over the question arose, "nationalism broke loose from all constitutional restraints, resisted the attempts to dismember it," and brought disaster to the State Rights advocates.

Although the Civil War and its aftermath decided the issue of secession and closed this chapter on the clash between the central and state governments, the basic conflict of nationalism versus particularism still persists. Certainly, consideration should be given those forceful characters who, by giving impulse and direction to the important theories which underlie various doctrines affecting the nature of the Union, have effectively influenced and are still influencing the course of American political history. Therefore, a study of the antecedents and of the evolution of Edward Livingston's view of the nature of the Union is desirable particularly as he exercised positive influence on the course of events in two important transitional periods prior to 1860. An analysis of his philosophy is also profitable since it is more nearly in accord with present day tendencies in the United States than are the doctrines of his contemporaries.

Born of patrician parents in Clermont, Columbia County, New York, May 28, 1764, Edward Livingston's most impressionable years coincided with a momentous period in American history. In these times of great stress and danger he matured early. Following his graduation from Nassau Hall, now Princeton University, in 1781, he studied law under John Lansing, and was thrown into contact with such men as Aaron Burr, Alexander Hamilton, and Chancellor John Kent. His admission to the distinguished New York bar at the age of twenty-one enabled him to enlarge his circle of acquaintances among prominent individuals who later were Federalists.[1]

It was through his older brother, Robert R. Livingston, that Edward came into contact with the early important developments in American constitutional history. The older Livingston had served as a member of the Continental Congress and was one of the committee selected to prepare the Declaration of Independence. In 1777, he had assisted John Jay in the prep-

[1] William B. Hatcher, *Edward Livingston, Jeffersonian Republican and Jacksonian Democrat* (Baton Rouge, 1940), 4-6. The material from this source has been made available through the courtesy of the Louisiana State University Press.

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aration of the draft of the New York constitution, and in 1781, he had been appointed Secretary of Foreign Affairs. In 1788, in co-operation with John Jay and Alexander Hamilton, the Morrises and the Schuylers, Robert R. Livingston overthrew the Clintons in the New York ratifying convention and turned the Confederation into the Union. The year following, he administered the oath of office to George Washington as the first chief executive of the new republic. The Livingstons were friends of the new government and as large property owners, were favorable to a strong central power; yet, the family ceased to be Federalists when Robert R. Livingston was overlooked in the distribution of patronage.[2]

Before the Livingston defection, however, Edward Livingston's ideas as to the nature of the Union had been formed. Naturally, as his views matured there was some slight modification of his first concept, but fundamentally it remained unchanged throughout his life. He prepared no special systematic treatise on the theory and principle of government, but his active participation in the field of practical politics prevented him from following visionary ideas. His political philosophy is to be found in his public utterances on the floors of Congress and in the vibrant Antinullification Proclamation which, as Secretary of State, he prepared for Andrew Jackson in 1832. In 1798, as Representative from New York contending for the right of public speech and freedom of the press, he championed the cause of individual liberty against encroachment by the national government.[3] In 1824, as Representative from New Orleans advocating the policy of internal improvements at national expense, he pled for a Union that would admit the existence of a nation able to act unitedly on national questions unrestricted by sectional jealousies.[4] In 1830, as Senator from Louisiana taking issue with both Robert Y. Hayne and Daniel Webster as to the nature of the Union, he contended for the indissolubility of the Union and for the full sovereignty of the national government in all delegated powers.[5] Although little new was expressed in his Antinullification document, it marked the climax of his arguments in the exposition of his concept of constitutional government.[6]

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[2] Dixon R. Fox, *The Decline of Aristocracy in the Politics of New York* (New York, 1919), 64.

[3] *Annals of Congress*, 5 Cong., 2 Sess., 2093.

[4] *Ibid.*, 18 Cong., 1 Sess., 1430-59.

[5] *Register of Debates*, 21 Cong., 1 Sess., 247-72.

[6] James Richardson (ed.), *A Compilation of the Messages and Papers of the Presidents*, 1789-1902, 10 vols. (Washington, 1903), II, 610-56.

Not only was Livingston familiar with the weakness of the government under the Confederation, but he understood the political theories of the colonial and revolutionary periods as well as the problems that confronted the framers of the Constitution in 1787. He possessed a thorough knowledge of the social contract theories as developed by European political philosophers such as John Milton, Algernon Sidney, Thomas Hobbes, and John Locke. Through his study of Roman law, Livingston became acquainted with both the Roman doctrine of natural law, a law superior to the commands of any ruler or to any human enactment, and the Roman theory that the ultimate sovereignty resided in the mass of the citizens who delegated authority to the rulers. He was acquainted with the tenets expressed in such important contracts as the Mayflower Compact, the Fundamental Orders of Connecticut, the Providence and Portsmouth agreements, and the Body of Liberties of Massachusetts. Roger Williams' democratic interpretation of the theory of the social contract system and Samuel von Pufendorf's *De Jure Naturae et Gentium* from which John Wise drew his natural-rights philosophy were known to him. He thoroughly understood the natural-rights philosophy which dominated the political thought of the Revolution, as expressed by Thomas Jefferson in the Declaration of Independence. In addition, Livingston was cognizant of the changing events of the 1776-1787 period that necessitated the shift in the philosophical and historical foundations of the colonial arguments of Samuel and John Adams, James Otis, John Dickinson, Thomas Jefferson, Thomas Paine, James Wilson and Alexander Hamilton.

Livingston saw this period of criticism changed into one of constructive effort to establish a strong national government. Property rights received more attention, and the rights of man were relegated to the background since confidence in the ability of the masses to govern themselves had been rudely shaken. The discord that resulted from the inability of state autonomy to supply the desired security for property gave impetus to a demand for a strong central government. Livingston realized that the men of the Philadelphia Convention had directed their efforts to the construction of a new central government designed to eliminate pressing evils. He asserted that in the construction of the new government, the members of the Convention felt that they had divided sovereignty between the federal and state govern-

ments. Consequently, the Union was neither a confederation nor a "consolidated Republic." The instrument that they framed called for the combination of the federal and the state units in the organization of the national legislature, the election of the President, the delegation of powers, and the ratification and amendment of the Constitution. As the men responsible for this new political agency were not theorists, they gave little concern as to how it fitted into any particular theoretical system. Later when these men did attempt to expound a theory of the nature of the Union, there inevitably occurred a controversy over the structure of the new government.

The controversy that arose when the Constitution was submitted for ratification or rejection was but one of a series of contentions that recurred at intervals until the Civil War between the particularistic and nationalistic schools of political thought. At times these controversies became so bitter that the security and permanence of the Union itself was endangered. Later in life, when referring to the strife of the ratification period, Livingston stated that "seldom did a Government go into operation under more trying circumstances; it had been adopted by bare majorities in several states." He recalled that "the opposition to it was soured by ill success, and embittered by acrimonious debates it had occasioned; its friends, the most violent and inconsiderate part of them at least, were elated by their triumph, and were supposed to nourish ulterior views, of changes leading to consolidation, to hereditary office, and other measures inconsistent with the letter and spirit of the Constitution they had established. . . ." It was "with perfect recollection" that he viewed "the scenes which immediately preceded and followed the adoption of the Government." Vividly he recalled having seen "it spring into existence, and was witness to the pangs and throes which gave it birth; the great change was not produced without struggles that had nearly convulsed the nation to its extinction; private interest, State pride, local views, fears of unknown changes, a dread of the encroaching nature of the Executive power, and of military establishments, and a sincere but mistaken idea that the individual States would soon fall a sacrifice to the consolidated power of the whole"—all of these, he pointed out, had "arrayed a great and powerful party against the establishment before it took place; and, subsequently, continued to operate, though in a less degree."[7]

[7] *Annals of Congress*, 18 Cong., 1 Sess., 44-45.

It was during these turbulent times that Livingston's political philosophy began to assume definite form. He refused to accept the opinions and conclusions of any particular school of political thought. He selected only those precepts which he thought were capable of constructing a logical and working theory of government in conformity with the provisions of the Constitution. The historical development and the legal interpretations of the phraseology of the instrument were utilized in the formation of his philosophy. Although on numerous points he was in accord with first one and then another of the political leaders, James Madison, Wilson, Jefferson, and even Hamilton, Livingston's view was more nearly in harmony with that expressed by Charles Pinckney in the speech which the South Carolinian made urging his native state to ratify the great instrument.

Livingston's position during the 1820's on the Bank question and on the problem of internal improvements with the co-ordinate doctrine of broad national powers, appeared to stamp him as an extreme nationalist. Yet, in 1830, when speaking to the Foot Resolution, he took issue with Webster and sustained Hayne in his contention that the Constitution was a "compact of each one [state] with the whole." In his opposition to the State Rights narrower theory of strict construction and its insiduous doctrine of nullification, he was as vigorous as Webster. The most complete statement of Livingston's constitutional concept is to be found in the ringing answer to the defiant South Carolina which he prepared for Jackson. In this document, he advanced doctrines of a far more completely national system of sovereignity, government, and liberty than had ever been expressed by any previous President. The temper of the message was foreign to Jackson's nature; and, up to the time when Livingston had replaced Martin Van Buren, Jackson had practically approved nullification.[8] It was well known that the President had not held such constitutional doctrines as the Proclamation contained; yet, it marked a decided advance in the development of the national theory of the Constitution.

The crisis lent particular earnestness to his words and directed public attention to the extreme nationalism that was enunciated. He assumed as his basic principle that the Union pre-

[8] Jackson's attitude on the Bank question, the Georgia-Indian problem, and the internal improvement policy appear to identify him with the State Rights group. His approval of Georgia's attitude toward the Indians certainly indicates that he was not unsympathetic toward the policy of nullification.

ceded independence, and that by a joint act of the people the United States declared themselves a nation. As a nation, the people of the several states of the United States established the Constitution of 1787, and placed in that great instrument the provision that the organic act, the laws, and the treaties made in accordance therewith are the supreme law of the land and that "the judges in every state shall be bound thereby, anything in the Constitution or the laws of any state to the contrary notwithstanding." From this premise, he concluded that South Carolina could not contrive legal processes to prevent the execution of national laws within her borders. To accomplish this the state must resort to violence, and this, of necessity, stamped nullification as rebellion. He refuted the claim that nullification was "made in accordance with the Constitution," by pointing out that the Judicial Department of the national government, not a commonwealth convention, had been designated by the Constitution to determine the question.

In considering the influence of the historical development of constitutional government on Livingston's views, it is important to notice how he differentiated the United States from a league or a confederation. It is interesting to note the line of cleavage he drew between the political organization under the Articles of Confederation and that effected under the Constitution. In 1824 and in 1830 during his speeches on the question of internal improvements and on the Foot Resolution, Livingston described the development of the early stage of American political existence. While the Foot Resolution was designed to restrict the sale of public lands, the debates soon shifted from the original question to the proper status of the Union. In 1830, Livingston pointed out that even in the early period there were mixed characteristics of compact and popular or consolidated government.[9] The latter, he defined as "one founded by consent, express or implied, of the people of the whole nation and which operates in all of its departments directly upon the people." In contradistinction, the "federative" government was "one composed of several independent states, bound together for specific purposes, and relying for the efficiency of its operations upon the different states in their political capacity, not indivdually upon the citizens."

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[9] *Register of Debates*, 21 Cong., 1 Sess., 265.

Although dependent upon another power in the colonial period, the colonies very early considered themselves connected with each other by common interest. Livingston pointed out that leagues were formed for the common defense and, before the Declaration of Independence, these were known in their aggregate character as the "United Colonies of America." The decisive and important step of declaring themselves a nation was taken not by several acts, but jointly. The whole instrument through which this was accomplished complained of illegal and oppressive acts against them, jointly. And when the terms of the Confederacy were reduced to form, it was in that of a solemn league by which the states agreed that they would collectively form one nation for the purpose of conducting certain specific domestic affairs and of controlling all foreign relations.

Livingston asserted that colonial delegates to the Constitutional Congress without any formal federative contract, by general consent, had assumed and exercised powers belonging to a consolidated government. Furthermore, in taking that decisive and important step of jointly declaring their independence, they not only jointly declared themselves independent but seemingly did so as one nation, for, in the preamble they asserted the right as "one people" to take their station, *not their stations,* to which they were entitled. For more than two years following the Declaration, Livingston pointed out, the states remained connected, under the same authority of a general congress, not by virtue of any express compact but by no other bond than that of their common love of liberty and their common fear of danger. During this period the congress exercised all the powers of a mixed kind which, had they been conferred, would have constituted a government that properly could not have been called either a federation of states retaining all their sovereignity, or a consolidated government to which all sovereignity had been surrendered.

In 1824, Livingston maintained that a departure from principle had been involved when the states entered into the Confederation.[10] Although the Confederation had "made a fundamental change in the fundamental principles of each Government," the people were not consulted. The government formed under the Confederation was adopted by the legislatures of the different

[10] *Annals of Congress*, 18 Cong., 1 Sess., 1435-36.

states, but the people had given the legislatures no right to alter their organic laws. This was definitely a compact between the states, but as Livingston indicated, it contained among a number of stipulations of a strictly federative nature others giving to Congress powers that trenched upon the state sovereignties. Among the conferred powers of a consolidated nature were those pertaining to coining money, emitting bills of credit, equipping fleets, raising armies, declaring war and making peace, entering into treaties that were binding upon the whole, and especially, establishing courts of admiralty which possessed the power under certain conditions of binding citizens of the states individually. Yet this bond of union under the Confederation was vitiated by defects. Even if each state had not been granted the practical power of vetoing the operations it disliked, the government under the Articles of Confederation could not have succeeded. The failure to provide the general government with power to act directly upon the citizens, to raise revenues independently of the agency of the states, and to establish a national judiciary, said Livingston, were sufficient to foredoom the experiment.

In contrast with the Confederation, Livingston maintained that the existing government was legally established.[11] The constitution was original in its conception, a constitution, *sui generis,* containing a combination of powers to cover an indefinite extent of territory without danger of weakness or apprehension. It contained the means of adapting itself by judicious amendments to all changes that time and circumstance might require. It specifically provided for the three departments and clearly defined their respective spheres of power and responsibility. And finally, it possessed a combination of a federative and a consolidative government.

According to Livingston's view, the Constitution of the United States formed a government, not a league. This government was partly federative, depending for its existence and action on the states; it was partly popular, acting directly on the citizens of the several states. The organic law was framed by delegates appointed by the "States" and, had been submitted to the states as sovereign units for ratification. It was ratified by conventions of people of each state convened by the laws of the respective states. It guaranteed the existence of the states which

[11] *Ibid.*, 1436.

in turn were necessary for its own existence. Yet, it was a compact by which the people of each state had consented to take from their own legislatures certain of the powers they had conferred upon them and to transfer them, with certain other enumerated powers, to the government of the United States.[12] The states were represented in one branch by Senators, chosen by the state legislatures; and in the other branch by representatives, elected by the people in accordance with the requirements prescribed by the states themselves, among which were the qualifications of electors. In the Senate, the state sovereignties possessed an equal qualified power of rejecting all legislative acts; and, in the electoral college, they selected the Executive in whom was vested the power to veto acts of Congress.[13] Briefly summarizing, the government was one in which the people were represented, which operated directly on the people individually, not upon the states. The government had its inception with the states; it depended upon their political existence for its operation, and its own duration was contingent on theirs. The states existed before the Constitution, and the existing government itself would never have gone into operation had not the states in their political capacity been consulted. "That consent," reasoned Livingston, "is each one with the whole and not with the government which was made by such compact."[14]

In his views concerning the governmental structure, Livingston was at variance with both John C. Calhoun and Webster. Calhoun held that the people of the several states had ordained and established the Constitution and pointed out that an historical analysis of the preamble of the instrument demonstrated the particularistic intent of the framers.[15] The Constitution was made by the "States" as sovereign bodies, and through it the "States" created only a governmental agency. This agency or central government, he asserted, was merely an agency for the states which possessed full sovereignity; they had only loaned certain soveign powers which they could recall from the governmental agent at any time.

While Calhoun assumed the viewpoint of international law, Webster looked at the Union from the standpoint of constitutional

[12] *Register of Debates*, 21 Cong., 1 Sess., 265.
[13] *Annals of Congress*, 18 Cong., 1 Sess., 1452.
[14] *Register of Debates*, 21 Cong., 1 Sess., 265.
[15] Richard K. Crallé (ed.), *The Works of John C. Calhoun*, 6 vols. (New York, 1864), I, 128, 132-34.

law.[16] He denied that the Union was merely a compact between states and asserted that the Constitution had been framed by the people of the entire country through the means of an agreement between individuals.[17] He contended that the instrument was established not "by the people of the several states" but "by the people of the United States in aggregate." In line with William Blackstone's reasoning, he concluded that "When the people agree to erect a government and actually erect it, the thing is done, and the agreement is at an end. The compact is executed, . . ." and consequently, it was considered law.[18]

Paralleling the idea of the mixed character of the Union was the theory that sovereignty was capable of division and actually was divided in the United States. This doctrine, generally accepted until the days of Calhoun, was current during the ratification period, and still is the theory of the federal courts. At the time of the adoption of the Constitution, the prevalent opinion was that in some manner sovereignty was divided between the States and the Union. The states realized that they were parting with a portion of their sovereignty, but did not consider that they were renouncing all of it. James Wilson's location of the ultimate controlling power in the community as being "with the people" was accepted without particular inquiry as to the exact meaning of the phrase. To James Madison's mind, nothing was clearer than the proposition that sovereignty may be divided. It was difficult, he asserted, "to argue intelligibly concerning the compond system of government in the United States without admitting the divisibility of sovereignty."[19] In his opinion sovereignty was divided between the states on the one hand and the Union on the other, so that the whole society consisted in a number of partial sovereignties.[20] The United States Judiciary in the case of Chisholm *v.* Georgia early enunciated the idea of the divisibility of sovereignty. It was declared that "the United States are sovereign as to all powers of the government surrendered. Each state in the Union is sovereign as to all powers reserved."[21] Subsequent decisions gave expression to the same

[16] Edward Everett (ed.), *The Works of Daniel Webster*, 6 vols. (Boston, 1851), III, 334-37.
[17] *Ibid.*, 346.
[18] *Ibid.*, 468.
[19] *Letters and Other Writings of James Madison*, 4 vols. (Cong. ed., Philadelphia, 1865), IV, 420-21.
[20] *Ibid.*, 61.
[21] 2 *Dallas*, 435.

theory and, in time, the courts accepted the idea of the division of sovereign power between the states and the Union.

The term *sovereignty* does not appear in the Constitution and it was not until 1830, during the Senate debate over the Foot Resolution, that the theory of individual sovereignty was pronounced. The raising of this question resulted in the appearance of a definite cleavage in the body politic over the two theories of American sovereignty that persisted until the Civil War. On this point, Livingston was not in absolute accord with either of the two schools of thought. He was more nearly in agreement with the theory advanced by that forceful exponent of nationalism, Joseph Story, than with that enunciated by either Calhoun, the extreme State Rights advocate, or Webster, the leader of the nationalist school of thought. To Livingston, sovereignty, not the ultimate sovereign power residing in the people that must always in theory exist, meant "that power to regulate the affairs of the nation which reside in the government, whatever that form of government may be."[22] Neither Wilson nor Madison had been stauncher champions of the theory of divided authority than he. The entire sovereignty of the states, individually, had not been retained; and the relations of citizens and sovereign, he contended, were reciprocal. The acceptance of this logically contradictory view was made possible by the general belief in natural-rights, popular sovereignty, and the establishment of political authority by means of social contract.

To some extent Livingston followed Story's line of reasoning in his effort to distinguish the two uses of the term "sovereignty" in such manner as to obviate the difficulties inherent in the idea of double supremacy. In the development of his thesis, Story maintained that "by sovereignty in its largest sense, is meant supreme, absolute, uncontrollable power, the *jus summi imperii*, the absolute right to govern."[23] He indicated that the term was used in another and more limited sense, denoting "such political power as in the actual organization of the particular state or nation are to be exclusively exercised by certain public functionaries without the control of any superior power." From this premise Story deduced that sovereignty is not the ultimate political power, but that which, "under the given form of organiza-

[22] *Register of Debates*, 21 Cong., 1 Sess., 266.

[23] Joseph Story, *Commentaries of the Constitution of the United States*, 2 vols. (5th ed., Boston, 1905), I, Secs., 207-208, pp. 149-52.

tion" is exercised "without the control of superior authority." Accepting this viewpoint it was easy and logical for him to conclude that sovereignty in the limited sense was divided and in the broader sense was one.

In the development of his theory of divided sovereignty, Livingston argued that to whatever power the citizens owed allegiance, that power was sovereign. He realized, however, that "there cannot be a double, although there may be a subordinate fealty."[24] He pointed out that the government in the exercise of its legitimate powers acted for the most part upon the individuals, not through the medium of the state authorities, which was an essential characteristic of popular government. On the other hand, he refuted the arguments designed to prove the total consolidated nature of the government by the use of the preamble to the Constitution. He asserted that the words, "We, the people," proved nothing more than that the people of the several states had been consulted and had given their consent to the instrument. It was common knowledge, he contended, that the people of the United States, collectively, as a whole people, had not given their assent nor were they consulted in that capacity, but the people of each state were consulted to determine the decision of that state. Contending that the government was federo-consolidative, he logically concluded that in the "attributes of sovereignty, which, by the federal compact were transferred to the General Government, that Government is sovereign and supreme; the States have abandoned, and can never reclaim them. As to all other sovereign powers, the States retain them."[25]

The theory of divided sovereignty failed to satisfy either the particularists or the nationalists. It neither determined where the exact line of division between the state and the national authority should lie nor provided the state with the machinery to check any excess of sovereignty assumed by the general government. The nationalists dropped the theory and, later, it came into conflict with the philosophical manifestation of Calhoun's school of state supremacy which held that sovereignty, as the ultimate and supreme power, is indivisible by its very nature. In adhering to the theory of divided sovereignty, Livingston avoided the acceptance of the doctrine of either the extreme nationalists or

[24] *Register of Debates*, 21 Cong., 1 Sess., 266.
[25] *Ibid.*

the particularists, which, he maintained, led on the one hand to a complete national government, and on the other to disunion and the extremity of treason.

The theory of the separation of powers, popular since the time of Charles de Montesquieu, was accepted by Livingston. Although admitting the necessity at times for close relationship among the departments to secure the proper execution of their constitutional power, he denied the constitutional right of any one department to encroach upon the domain of either of the others. He interpreted such acts of Congress as the Sedition Law of 1798 as empowering the President alone to make, construe, and apply the law; therefore, they were violations of specific prohibitions of the Constitution.[26] Livingston's understanding of the constitutional rights, powers, and duties of the chief magistrate were, in the main, stated in the first part of his speech on the Foot Resolution in 1830. In the effort to refute the charge of executive usurpation of power on the part of Jackson, he enunciated his views on the powers of that office, and in these views there is no departure from the thesis expressed in his speeches in the House during the debates on the Jay Treaty,[27] the Robbins Case,[28] and again, on the Panama Mission.[29] Consequently, his concept cannot be attacked on the grounds of political exigency as he was a political opponent of the Washington, John Adams, and John Quincy Adams administrations.

Jackson's opponents in the Senate were most critical of his vigorous policies and they charged that "the principles of the administration" were "destructive of the liberties of the country." They accused the President of violating the Constitution when he removed persons from office without the advice and consent of the Senate. They alleged that the removals had been made "to satisfy the vengeance of the President" or to reward his friends.[30] As administration leader in the Senate, the responsibility of defending the President devolved upon Livingston and it was during his attempt to vindicate Jackson that he expounded his views with regard to the powers of the Executive. According to Livingston, executive powers were either mandatory or discretionary and

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[26] *Annals of Congress*, 4 Cong., 2 Sess., 1043-44.
[27] *Ibid.*, 4 Cong., 1 Sess., 424, 426-27, 438, 760-62, 820.
[28] *Ibid.*, 4 Cong., 2 Sess., 1043-44.
[29] *Register of Debates*, 19 Cong., 1 Sess., 2195-2215.
[30] *Ibid.*, 21 Cong., 1 Sess., 256-57, 261.

were specially enumerated, implied, or inferred. The execution of laws resided with the President alone. Although the Senate could approve or reject appointments, it could not associate itself with the President for sharing the executive power would divide responsibility.[31]

Although Livingston held that with the passage of laws by Congress it became the duty of the President to enforce them, he contended further that the affirmation of their constitutionality by the Supreme Court made their execution by the Chief Magistrate mandatory. To every grant of power was annexed a corresponding responsibility; responsibilty to the laws for the willful abuse or neglect of the power; responsibility to public opinion for the indiscreet or erroneous exercise of the grant.[32] The President, therefore, must assume full responsibilty for his performance of official duties. On the question of appointments, where the advice and consent of the Senate were necessary, that body could only approve or disapprove, it could advise or refuse to advise; but, it did not appoint, it could never select, and consequently, the President was responsible for the act.

By inference, Livingston concluded the Constitution empowered the President to make removals, in declaring that he possessed executive power and in commissioning him to execute the laws faithfully. The proper execution of the laws required that the executive be clothed with the authority to designate those persons selected to put the laws into effect. Of necessity, the power of removal must be granted and the power to fill such vacancy must be annexed, otherwise the President was not responsible. The participation of the Senate in the exercise of the power of removal would entail a violation of the social compact and would destroy one important principle on which the compact was founded, since many of the important operations—the conduct of foreign affairs and the collection of imposts and taxes—would cease.[33] The President had the right of removal for just cause; and, for the due exercise of this right, he must bear sole responsibility. Admission of the existence of such power in the Senate immediately would add to its judicial power that of an accuser.[34]

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[31] *Ibid.*, 261-62. "The President has the right of removal, and he is liable to impeachment for corruption and malconduct in the exercise of this, as well as any other of his functions."

[32] *Ibid.*, 261.

[33] *Ibid.*, 262-63.

[34] *Ibid.*, 263.

Livingston vigorously opposed the executive policy of establishing commissions to replace the judiciary for the trial of cases involving property titles in Louisiana. This practice which had been followed for more than twenty years, he contended, was an infringement on the constitutional distribution of power. Following the acquisition of Louisiana, considerable litigation involving property titles in the territory had arisen. The litigants irrespective of whether the disputed claims had been made by the general government or by an individual, where required to abide by the decision of a commission appointed by the President. Livingston reasoned that the Executive possessed neither the express nor the implied constitutional authority to disregard the judiciary by substituting commissioners of his own selection, holding office at his pleasure and serving in a judicial capacity in cases involving the claims of citizens. Since the decisions as to the validity of a title to lands was a judicial function, such questions should be decided by the federal courts.[35] The judiciary of the United States, Livingston argued, possessed jurisdiction over controversies arising not only under the Constitution and laws "made in pursuance thereof" but also over those arising between parties coming under the jurisdiction of the courts by constitutional provisions. He contended, therefore, that the submission of such cases to the federal courts was mandatory and the court's determination of constitutionality was final and its decision was binding upon both parties.[36] Again, Livingston pointed out, the intent of the instrument was violated whenever a confluence of authority in the executive and judicial departments obtained as existed when Jay retained his judicial office until after his return from the British Mission.[37]

By inference, Livingston concluded it to be the constitutional duty of the Executive to keep the legislative department apprised of the status of foreign relations as far as possible without injury to their successful negotiations.[38] Livingston felt it was the part of wisdom for the President to maintain an accord with the legislative branch of the government in which the Constitution reposed legislative power. He contended, nevertheless, that the organic law did not give to Congress the right to encroach upon the prerogatives of the Executive. This point he made clear in his

[35] *Ibid.*, 249-50.
[36] *Ibid.*, 267.
[37] *Ibid.*, 253.
[38] *Annals of Congress*, 4 Cong., 1 Sess., 426.

speech in the House in 1826 during the debate on the question of the participation of the United States in the Panama Congress.[39] He not only refused to join the Jackson forces in the fight on constitutional grounds against the appropriation to defray the expenses of the delegates, but he warned the House that its contemplated action of annexing conditions to the appropriation was an encroachment on executive power. The President, with the advice and consent of the Senate, had the right to appoint foreign ministers and the House controlled the appropriations requisite for the conduct of foreign affairs. "The right of instruction and the mode of conducting negotiations," Livingston argued, were "as essentially executive powers as the appointment of the minister to conduct them."[40] The House, he concluded, could assume neither of these powers, consequently, it could not annex conditions to an appropriation, for the power to grant or to refuse did not include the right to modify a grant.[41]

One of the two most important questions before the Eighteenth Congress was that of internal improvements. It was on constitutional grounds that the State Righters attacked an internal improvement bill that was introduced in the House, December 9, 1823. They immediately saw a new threat to state sovereignty and argued that such undertaking by the national government would be an unconstitutional invasion of the powers reserved to the States. In refuting these arguments, Livingston pointed out that the general government possessed the necessary power under the Constitution to effect the provisions of the bill. In answering the constitutional objection,[42] he gave an exposition of his concept of the national Union in which he developed his thesis in regard to legislative power, and the location and division of that power. He divided legislative power into two categories—civil and political—and placed its original residence in the people.

Legislative power, he claimed was equally extensive in all free states until the people transferred it "by Constitutional laws," or restrained it by compact. "In the act of constitutional legislation," the people in all of the states of the Union "transferred

[39] *Register of Debates*, 19 Cong., 1 Sess., 2195-2215.

[40] *Ibid.*, 2298-99.

[41] *Ibid.*, 2196-98, 2218.

[42] *Annals of Congress*, 18 Cong., 1 Sess., 1437-43. The national government they contended, "would have jurisdiction over the roads and canals when constructed; it would, of necessity, acquire ownership of property upon which improvements were made; it could, under provisions of the proposed bill, create corporations possessing exclusive privileges and powers; all of which was an unconstitutional invasion of powers reserved to the states."

all other legislative power to their Representatives," except that pertaining to the election of the executors of the law and the changes in the organic law when necessary. The states, therefore, retained the residuum of the legislative power not vested in the general government or retained by the people.

Livingston reasoned that powers of political legislation embracing such objects as those relating to internal improvements were not vested in the state governments. He held this conclusion because he believed these powers related to no one state in particular and existed only with the existence of the general government. An attempt upon the part of a state to exercise the right of acting for the whole, he asserted, involved the violation of the basic equality of the Union. The translation of such power into a law entailed either a right or an obligation, according to its operation either as a benefit or an injury to the people. If there were a right, then a corresponding power was required to enforce it; if there were no right, there existed no corresponding obligation. Conversely, if there were an obligation, then one state was required to act for the benefit of the whole. This was unjust in principle and unequal in operation. Therefore, the states did not intend to retain the power for their own use. Neither did the people, he argued, retain this power because they relinquished all such power "in the formation of the State governments" except that pertaining to constitutional changes and election of administrators of their government. Since the power was a necessary legislative power that could not be annihilated except by express compact, it must, of necessary consequence, be vested in the general government.

The federal government, according to Livingston's interpretation, possessed and could exercise only such powers as were specifically designated by the Constitution. The framers of the organic law contemplated the application of the same rules of construction to all grants of principal power; and that the grants carried with them all of the necessary incidents. The instrument not only implied the grant of political powers of legislation of national scope but specifically empowered Congress to act in such cases. For example, the Constitution granted Congress the power to establish post offices and post roads and to regulate commerce "with foreign Nations, and among the several States, and with the Indian Tribes." If the grant of power to the United

States to establish post offices and post roads be interpreted to include the general direction and complete control of the post office establishments, then the same interpretation must, of necessity, be made in regard to the grant of powers pertaining to post roads. Again, in the regulation of commerce, if the grant implied only the restraint by laws or rules, or if it signified both restrictive laws and supervision, in either instance then, the same interpretation was applicable universally to other grants of similar nature. The same power, Livingston reasoned, extended to all subjects of similar import passed by Congress which were not in violation of the express provisions of the Constitution itself. Therefore, ancillary powers, Livingston concluded, were expressly given; otherwise, the express grant of specific powers could result in the exclusion of other powers equally intended to be comprehended by the instrument, since the framers could not have anticipated and provided for every possible future contingency.

The grant of political powers to the central government did not endanger the states, Livingston contended, for "the representatives of the people" were the guardians of state sovereignty. The very nature of the government precluded such fear. The representatives returned to the electorate at stated and short intervals and the state sovereignties with equal powers occupied exclusively the Senate. As a further barrier against any invasion of State Rights, the Constitution provided that the states, in the full exercise of their power, were empowered to select the executive who was vested with the power to veto acts of Congress. Consequently, the constitutional barrier was an effective deterrent to an invasion of State Rights except by members of the government and in the case of violence. Livingston considered that the danger lay rather in the separation of the states than in the political powers of the national government.[43]

In its earliest form, the State Rights idea was based on the current theory of social contract. Although not advanced in the defense of State Rights, James Wilson's arguments were drawn upon for analogies between social contract and federal contract by the exponents of this school of thought. The finally accepted statement of the State Rights doctrine as expounded by its leader, Calhoun, repudiated the contentions of the *Naturrecht* school of

[43] *Ibid.*, 1452-54.

political theory. Government, he maintained, was necessary to society, for without governmental restraint society was impossible. Since government itself contained germs of evil, it, in turn, must be controlled or balanced. And it was to this end, Calhoun asserted, that a constitution was erected whereby the destructive tendencies inherent in the government were held in check.

Calhoun drew from two great sources of American constitutional history for his constitutional defense of the interests of the South. From the Jeffersonian Republicans, he appropriated the familiar doctrine of State Rights, and from the Federalists he derived the doctrine of balanced powers. By combining these two ideas, he postulated the theory of the state's veto as an additional check on the government. In the attempt to delegate to the government under the Constitution the necessary powers and yet restrain it from oppressing members of society, Calhoun evolved his theory of the "concurrent" or "constitutional" majority.[44] By this doctrine, he attempted to establish a means of combatting the despotism of the numerical majority by granting to each seperate interest, or to each section of the country the power of a veto on the others. Each state of the Union was to enjoy a veto on the transactions of the general government, thereby establishing the principle of action through the "concurrent" majority. This was simply the preface to nullification, for he contended that a state could legally reject any measure that it regarded inconsistent with the terms of the Constitution. In other words, Calhoun declared, a state could nullify a proposed action of the federal government. He took the step leading to the right of secession when he stated that if three-fourths of the states supported the action of the government, the nullifying state either must yield or withdraw from the Union.[45] Reasoning from this premise he developed a constitutional means of defense possessed by each state through the assured action of the "concurrent" majority that precluded the exercise of tyrannical conduct on the part of the numerical majority.

Unlike Calhoun, Webster enunciated no philosophic theory regarding the nature of the state; his doctrine was purely legal and constitutional. In a general way, he retained the social

[44] Crallé, *The Works of John C. Calhoun*, I, 27.
[45] *Ibid.*, 297-301, 396.

contract background of American political theory and admitted that the Union was formed as a result of a contract. He denied, however, that the Constitution was a contract, and maintained that it was the fundamental law,[46] since the original contract was of the social compact type which created a body politic. He agreed with Calhoun that the general government possessed limited powers and that sovereignty was indivisible, but he located sovereignty in the people of the United States and contended that the federal government was the final and conclusive judge of its own powers. If each state were to decide the extent of the powers for itself, Webster argued, then what was law in one state was not law in another. Or, if the resistance of any one state compelled an entire repeal of the law, then a minority, and a small minority, governed the whole country.[47]

Employing the phraseology of the instrument, Webster sought to prove that the Constitution was the organic law of the land, not a mere covenant among sovereign states. Except that the fundamental law provided its own organ of interpretation, "and but for this," argued Webster, "it would in all probability, have been now among things which are past."[48] Webster contended that the Constitution denied the thesis of state nullification, and he held that before any state could prove "her right to dissolve the Union" it must show its authority to undo what had been done. No state was at liberty to secede unless it could show that it possessed the right to reject and break up what the people had ratified.[49] The Constitution, Webster pointed out, provided "a suitable mode and tribunal" for settling questions of constitutional law and declared that the judicial power was final arbiter in all questions pertaining to constitutional power. Since the Constitution was the supreme law of the land, so reasoned Webster, the Union was not a mere treaty relation that might be denounced at will, but was an agreement as obligatory and indissoluble as the social contract on which the whole fabric of society rested. No state had the right to question the authority or supremacy of the Constitution, nullify its provisions or withdraw from the Union. Secession, Webster argued, was the criminal violation of constitutional law, a revolution which was an original right, but not a legal right.

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[46] Everett (ed.), *The Works of Daniel Webster*, III, 468.
[47] *Ibid.*, 463-64.
[48] *Ibid.*, 335.
[49] *Ibid.*, 455.

The retention of a portion of sovereignty by the state was, to Livingston, a most valuable part of the government. As a permanent intermediate corps between the people and the federal government, the states possessed ability to check the federal head, to resist either legislative or executive encroachment. Yet, the states were kept within constitutional bounds by direct operation of the general laws on their citizens through the judiciary. As a result of this residual sovereignty, the states held the constitutional right to attempt to secure the repeal of palpably unconstitutional laws. On the question pertaining to the determination of the constitutionality of a law, he consistently maintained there were two appeals open—one to the judiciary, and the other to the people of the states. It is true that during the debates over the Alien and Sedition Laws of 1798, he placed the determination in the first instance with the people,[50] but, by 1824, he had retreated from this position and held that the appeal was to be made in the first instance to the judiciary—constitutional rather than revolutionary procedure.[51] Madison agreed with Livingston that this was the true purport of the Virginia Resolutions and was an exemplification of the effective utility of the agency of the state in securing relief under constitutional provisions.[52]

In the controversy over the method of determining the constitutionality of an act of Congress between the State Rights adherents and the nationalist group, Livingston was at issue with both Calhoun and Webster. He denied Calhoun's interpretation of the Madison Resolutions of 1798 whereby the particularists asserted the constitutional right of a state to resist the execution of an unconstitutional law of Congress, to array the forces of the state against the decrees of the judiciary, and to threaten to interpose a constitutional and peaceful veto of a federal act.[53]

Not only did Livingston hold that the power claimed for the state by Calhoun was dangerous, but he contended that the doctrine which acknowledged the existence of reserved rights and at the same time eliminated the means of protecting them, as enunciated by Webster, was equally dangerous. Under a popular government, the will of the majority of the people must be executed. Consequently, the people of a few large states with

[50] *Annals of Congress*, 5 Cong., 2 Sess., 2014, 2093-2100, 2152-56.
[51] *Register of Debates*, 21 Cong., 1 Sess., 267.
[52] *Letters and Other Writings of James Madison* (Cong. ed.), IV, 80; James Madison to Edward Livingston, May 8, 1830, in Washington *Globe*, February 4, 1833.
[53] *Register of Debates*, 21 Cong., 1 Sess., 247-72.

a majority of the total number of votes would be granted, as Livingston pointed out, the right to amend the fundamental compact in such manner as to be detrimental to the Union. Similarly, the procedure of amending the instrument might be altered so that it would place "three-fourths of the states at the mercy of one-fourth of their number." Taken to its ultimate conclusion, the doctrine destroyed all sovereignty of the states and relegated them to the situation of any other political subdivision of a consolidated government. An attempt on the part of two-thirds of the states, constituting a minority population, to defend certain unsurrendered portions of their sovereignty at the risk of life and expense of fortune would result disastrously to the nation. It also naturally followed that Livingston should hold that a state under the provisions of the compact could not constitutionally resist a law of Congress as advocated by Calhoun, for the Constitution was paramount in authority to a law of the United States and both to a law of a state. Such right was incompatible with the nature of the government, as "the existence of the general government must depend upon that feature which permits the exercise of all its legitimate powers directly upon the people without intervention of the states."[54]

The power to resist constitutionally a law of Congress was neither reserved nor implied in the Constitution; no reference, Livingston asserted, was made to such provisions in the debates of the Federal Convention that framed it, or in the state conventions that adopted it. Provision, however, had been made in the organic law for the settlement of the controversies arising between the Constitution and either the law of the United States or the law of a state. The states agreed in the compact that such controversies "must be submitted to the Judiciary of the United States"; they consented that the Supreme Court was the final arbiter; and they "unequivocally surrendered every constitutional right of impeding or resisting the execution of any decree or judgment of the Supreme Court . . . even if such decree or judgment should, in the opinion of the States, be unconstitutional."[55] Clearly, then, the answer was self-evident to the question who should judge between the people and the government, a question which Locke and the natural-rights philosophers had left unsolved in their search for some criterion whereby the validity of acts of

[54] *Ibid.*, 266-67.
[55] *Ibid.*

government should be determined. The national judiciary, Livingston asserted, was the keystone of the edifice through which the Constitution would be preserved inviolate against legislative and executive agression. Any other interpretation placed the power of the Union at the will of the members, thereby resulting inevitably in an essentially inefficient confederation.

By retaining certain attributes of sovereignty, the states, Livingston reasoned, had provided for the protection of the citizens against the unconstitutional abuse of the general government. A state that believed a law was palpably unconstitutional after affirmation by the Supreme Court could employ one or more of four possible remedies. Livingston argued that a state could remonstrate against such an act to Congress; could address the people in their elective functions to change or instruct their representatives to change the law; could address the other states declaring the act, in their opinion, to be unconstitutional and therefore void;[56] and finally, the state could propose amendments to the Constitution in the manner provided therein. In the case of the enforcement of an intolerable oppressive act by the central government, the final alternative was a resort to the natural right, a right not derived from the Constitution, but inherent in all people, the unquestionable right of revolution.

The events incident to the South Carolina Ordinance of Nullification had aroused Jackson's determination to assert vigorously the authority of the federal government. It was no accident that the Executive selected his Secretary of State to prepare his answer to South Carolina, for Edward Livingston's nationalistic views were well known to Jackson. Livingston had enunciated them clearly during the debates in the House and in the Senate. Both Jackson and Livingston participated in the preparation of the President's Proclamation. The appeal to the patriotism of the people of South Carolina and the militant note that was sounded were definitely contributions of Jackson. The relentless logic by which the arguments of the Secessionists were demolished and the constitutional doctrines that were proclaimed were definitely the work of Livingston, for he was the only influential member of Jackson's entourage who subscribed to such tenets.[57]

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[56] *Ibid.* Livingston failed to indicate what step logically followed this action; but, he did state that the introduction of this feature in our government "would totally change its nature . . . invite dissention, and end, at no distant period, in separation . . ."

[57] John C. Fitzpatrick (ed.), *The Autobiography of Martin Van Buren*, in American Historical Association, *Annual Report*, 1918, II, (Washington, 1920), 705; John R. Delafield, in *New York History* (Cooperstown, 1917-) XX (1939), 456. General Delafield states that "at Jackson's request, Livingston drew the proclamation" and the "original draft of this proclamation is here in the Mansion House."

Livingston declared that the United States was a government, not a league. A state never having formed, as a state, any league, did not have the right to secede, since to do so would not break a league, but destroy the unity of a nation. Secession, he argued, that resulted either from a constitutional law or one which, from its operation, could not be submitted to the Supreme Court, was a revolutionary act which could be justified only in the case of extreme oppression. The labelling of secession as a constitutional right was a subterfuge employed to deceive persons contemplating revolution but who were ignorant of the penalties attendant on defeat. Among the powers the states had relinquished to the nation was the right to punish treason against the United States. Without differentiating between treason and revolution, he affirmed that treason was an offense against sovereignty, and sovereignty must reside with the power to punish it. Secession was an infringement upon the rights of other states, and in self-defense the states could not permit it. Unequal operation of the law did not make an act unconstitutional, for most laws were unequal in their operation. The main object of the Constitution was "to form a more perfect union" and therefore he considered, "the power to annul a law of the United States, assumed by one State, *incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed.*"[58]

Public reaction to the Proclamation was varied. The nationalists were clearly jubilant; and, for a time, it appeared that their great protagonist, Webster, would become a member of the Jackson ranks. Many of the friends of the Executive were plainly startled by the spirit of the document and the mild State Rights faction was definitely alarmed. Probably Jackson had been committed further than he had intended, for later some of his close political friends and advisers attempted to explain away the strong doctrines of nationalism expressed by Livingston.[59] Abraham Lincoln subscribed to this theory and used as one of his three "sources of reference" this famous state paper in the preparation of his first inaugural address.[60]

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[58] Richardson (ed.), *A Compilation of the Messages and Papers of the Presidents*, II, 643.

[59] Samuel Tyler (ed.), *Memoir of Roger Brooke Taney* (Baltimore, 1872), 188; Fitzpatrick (ed.), *The Autobiography of Martin Van Buren*, 445-53, 553.

[60] William Henry Herndon, *Life of Abraham Lincoln* (New York, 1930), 386.

The conflict which ended at Appomattox not only jettisoned the particularist doctrines of Calhoun, but also necessitated the abandonment of purely legal and constitutional proofs adduced by Webster that the United States was a nation. These theories were replaced by a new concept of nationalism in which was embodied the political, social, and economic forces within the state.[61] The national state may possess sovereignty over the commonwealth, but it was to give free reign to individuals,[62] who were to find in the Constitution the expression of its spirit, and act in and through it with entire freedom in the furtherance of their aims.[63] As revealed by the strong tendency toward social democracy, however, one of the most outstanding problems has been the relationship of the government to the individual in the social, economic, and political realms.

In this relationship between the government and individual, Livingston held that reciprocal rights and obligations existed. According to the social security school of political thought, the government is obligated to interpret, in the light of existing conditions, its responsibility to society to "establish justice, insure domestic tranquility . . . promote the general welfare and secure the blessings of liberty." In this spirit the Constitution is construed as granting to the general government those powers of political legislation necessary to effect their execution. Not only is the government obligated to secure the full blessings of liberty, to guarantee the social security, and to protect the individual members of society, but it possesses the right to discharge these obligations even to the extent of entering the territorial and political domain of the several states. Since the government has the right to admit foreigners to the enjoyment of the benefits of liberty, it is obligated to train them to enjoy the full fruits of citizenship. The protection of life and property is dependent upon the maintenance of peace and the execution of justice through the establishment of national police powers. Likewise, the promotion of the general welfare necessitates the guarantee of social security on a national basis.

Livingston's theory of governmental responsibility to society accords, in the main, with the generally accepted present-day practices. The obligation of the state to its foreign element was

[61] Elisha Mulford, *The Nation* (New York, 1870), 144 *ff.*
[62] John W. Burgess, *Reconciliation of Government with Liberty* (New York, 1915), 379.
[63] Mulford, *The Nation*, 244 *ff.*

fully recognized by him when, in 1803, during his mayoralty of New York, he established a school of citizenship for immigrants over the protest of certain Federalists.[64] In the field of social reform he was a pioneer. His letter of January 1, 1803, to the President of the Mechanics' Society of New York breathed more of the spirit of the second quarter of the twentieth century than the first decade of the previous one.[65] In this communication was the germ of his Criminal Code, written at a later date, in which he maintained that the employment of the poor lessened crimes, as most hardened offenders against society "commenced their careers of crime by some petty offense committed in distress or conceived in the vacant hour of idleness." He anticipated the arguments of present-day social reformers when he challenged industry to bear its part of the burden of caring for the poor; when he advocated the adoption of plans for the "restoration of citizens sunk by misfortune below their former standing in Society"; when he insisted that constant employment would provide "a comfortable subsistence of our fellow citizens"; and, when he contended that there were those capable of supporting themselves by their labor, but who by particular circumstances were out of employment, and hence were forced either to experience want or apply for relief.[66]

Society, Livingston contended, was obligated to support its members who were incapable of supporting themselves, and the corresponding necessary political right to so do was reposed in the government which society had instituted. The right was political in that it affected society in the aggregate, consequently, it should be exercised by the general government. But, the failure of that agency to act did not relieve either the states or the local units of their responsibility. The exercise of the right was possible only when a designated central agency was clothed with complete authority over all needy persons and dealt with the question as a unit. The responsibility for relieving the status of the poor was assigned to the government as the agent of society by Livingston, and to the government, he contended, must be granted the right to pass upon the incapacity of those applying for assistance. As the criminal ranks drew their recruits from

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[64] "An American" in the New York *Herald*, May 1, 1802.

[65] Edward Livingston to the President of the Mechanics' Society, January 1, 1803, in *ibid.*, January 19, 1803.

[66] *Ibid.*

those who either were unable to secure employment, or were able to work but refused to do so, the administrative machinery of both organizations should be consolidated in one central agency.

The weakness in a system of separate authority as presently employed by the federal government in its administrative agencies to control crime and to care for the needy on a national basis without regard to state boundaries was evident to Livingston. His interest in penal reform was lifelong and was one of his major objectives during his entire legislative career. In both his *Penal Code* for Louisiana and for the United States,[67] he pointed out the reasons for the failure of independent agencies to function efficiently and effectively. According to existing statutory provisions, Livingston stated that the agency directing the execution of penal laws could protect society only after crimes had been committed; the organization charged with the administration of relief laws was limited to the care of the needy and could exercise no control over them; consequently, each was a preparatory school for the other and the persons of poverty and crime was shunted backward and forward without benefit either to themselves or to the community.

The concept of Livingston's humanitarian legislation contemplated the substitution of remedial legislation for the vindictive laws and the establishment of public workshops to provide employment for all who were in need of the bare necessities of life. He conceived it to be the duty of the national or state government, preferably the former, to ameliorate, not avenge, society; to reform the offenders; and to prevent crime. The great object of penal jurisdiction, to turn an offender into a course that would promote his true happiness whereby he would cease his injury to society, found expression in his School of Reform designed for juveniles. Although his work failed to secure legislative sanction, his plan of penal reform has served as a guide to enlightened legislators not only in the United States, but also in South America and Europe.

Thus, according to Livington's views on the nature of the union, the Constitution was the result of a compact entered into by the several states which possessed a combination of consoli-

[67] *The Complete Works of Edward Livingston on Criminal Jurisprudence Consisting of Systems of Penal Law for the State of Louisiana and for the United States of America*, 2 vols. (New York, 1873).

dative and federative characteristics of government. The Constitution had been submitted to the states as sovereign units; but, its adoption had been by the people in whom ultimate sovereignty resided, and not by the states. From the moment of its adoption, a nation had been created, composed of all the people of all the states. Each state had surrendered to the nation such of its sovereign rights as the Constitution specified and had retained those not expressly surrendered. The general government not only had its inception with the states but it was dependent upon their political existence for its operation and its duration was contingent on theirs. The Union, therefore, was not a compact between states, in the sense that the states were still sovereign, but a compact involving a certain loss of sovereignty by each state.

Among the powers the states had surrendered to the general government was that of impeding or resisting the execution of any decree or judgment of the Supreme Court, in cases in which the Constitution gave the Court jurisdiction, even though the states considered such decree or judgment unconstitutional. The veto power of the state was not only expressly forbidden by the Constitution but contradicted by the history of its development. The judiciary and not the states was the judge of the constiutionality of acts of Congress. The right of a state to secede from the Union was deduced from the erroneous idea of sovereignty of the states. A nation having been created, it inevitably followed, Livingston argued, that no state could withdraw, for that would admit the impossible thesis that a government would destroy itself, for secession by any state would destroy the nation. Among the attributes of sovereignty retained by the states was the protection of their citizens against an unconstitutional abuse of power by the central agency. He refused to include secession among the legal methods of resistance to the operation of an oppressive unconstitutional law of Congress, since he held that such an act was a revolutionary act, not a constitutional one.

In the formation of the general government, the people of each state had taken from their own legislatures certain of the powers they had conferred upon the legislatures originally, and transferred them with other enumerated powers to the government of the United States. Among the powers transferred to the central government by the states was that power of legislation

which had for its design the regulation and the welfare of the whole body politic. In conferring all of the political powers and certain of the enumerated civil powers of legislation upon the general government, Livingston contended that the national government had been empowered to enforce the laws passed by Congress under the provisions of such grant. Consequently, legislation that affected the whole mass of people in their aggregate capacity was reserved to the national government. It was under such political power of legislation that the general government possessed the constitutional right to legislate on questions pertaining to internal improvements, social security, execution of justice through the establishment of national police powers, and the promotion of the general welfare. In addition, the general government possessed the right to effect such laws even to the extent of entering the territorial and political domain of the several states.

The duty of enforcing all laws passed by Congress devolved upon the Executive. The affirmation of the constitutionality of acts of the national legislature by the Supreme Court made their execution by the President mandatory. The responsibility for the execution of the laws, however, did not empower the President to encroach upon the domain of either the judicial or legislative department of the government. Conversely, neither the legislature nor the judiciary possessed the constitutional authority to invade the spheres of power and responsibility of the executive department.

Livingston not only influenced the expression of Jeffersonian republicanism, but also gave direction to the course of Jacksonian democracy. Livingston, Madison, and Albert Gallatin led the fight against the passage of the Alien and Sedition Acts sponsored by the Federalists. By directing public attention to the fundamental principle of the assumption of undelegated powers by the general government, these leaders precipitated the fight that led to the overthrow of the Federalist party and the rise of Jefferson to power. The idea as to the nature of the Union which Livingston stated during the debates on the Foot Resolution differed from that expressed by every other Senator who spoke to the question. Yet Livingston was commissioned by Jackson to prepare the President's reply to South Carolina in 1832. Lin-

coln selected Livingston's particular view as to the nature of the Union for use in the preparation of his first official statement to the American public in one of the most difficult and trying periods of our history. Not only did Livingston's theory as to the nature of the Union influence the men who translated theory into action in the period prior to 1860, but his concept as to the responsibility of the government to the individual member of society persists to the present.

THREE LETTERS OF RICHARD CLAIBORNE TO WILLIAM MILLER, 1816-1818

Edited by WALTER PRICHARD

INTRODUCTION

Richard Claiborne, the writer of the letters, was born in Virginia.[1] He served with distinction as a soldier in the Revolutionary War,[2] probably rising to the rank of "Major", which title he retained for the remainder of his life. After the Louisiana Purchase he removed to the Territory of Orleans, and in 1806 he held the position of Private Secretary to Governor William Charles Cole Claiborne.[3] If he was related by blood to the Governor, the relationship was so remote that neither was able to trace it.[4]

He appears to have possessed the entire confidence of the Governor in this position, but on at least one occasion he was reprimanded by his superior for charging excessive fees for affixing the public seal to passports for residents of the Territory who wished to travel abroad.[5] His conduct as private secretary to the Governor apparently merited a promotion, for he was appointed Clerk of the Superior Court for the First District, with headquarters in New Orleans, on October 17, 1807.[6] He must have held this position for only a short time, for in 1808 he was appointed Judge of the Parish of Rapides, which position he retained until 1812.[7]

The Territory of Orleans was divided into nineteen parishes by an act of the Legislature, approved March 31, 1807, and the Governor was authorized to appoint a Judge in each parish for a four-year term.[8] No salary was attached to the position, but the

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[1] G. P. Whittington, "Rapides Parish, Louisiana: A History," in *Louisiana Historical Quarterly*, XVI (1933), 252.

[2] Dunbar Rowland, (ed.), *Official Letter Books of W.C.C. Claiborne, 1801-1816* (6 vols., Jackson, Mississippi, 1917), VI, 251.

[3] *Ibid.*, III, 255-257, 296, 305, 313, 319, 321-323, 347-348, 358-361, 375-381; IV, 27, 33-34, 58, 87. *Cf.* Whittington, *loc. cit.*, XVI, 252.

[4] Rowland, *op. cit.*, VI, 251.

[5] Rowland, *op. cit.*, III, 321-323.

[6] *Ibid.*, IV, 146; Whittington, *loc. cit.*, XVI, 252.

[7] Rowland, *op. cit.*, IV, 216, 221, 228, 246-247; V, 381-382, 395; VI, 67-68, 70, 72-73. *Cf.* Whittington, *loc. cit.*, XVI, 252.

[8] See *Acts passed at the second session of the first legislature of the Territory of Orleans* (1807), 2-52, for provisions regarding the division of the Territory into parishes and establishment of parish judges.

judges were authorized to charge fees for all their official acts.[9] One of the duties of a Parish Judge was the collection of taxes, and Richard Claiborne appears to have had some difficulty in this matter throughout the duration of his judgeship.[10]

Soon after Judge Claiborne entered upon the discharge of his duties in Rapides he appears to have become dissatisfied with his position there. He requested the Governor to transfer him to the Parish of Concordia, but for certain political reasons the Governor refused to grant the request. The Governor, at first, believed that the Judge's dissatisfaction with the Rapides position was due to the small remuneration which that office afforded. In a letter of September 11, 1808, addressed to his brother, Colonel Ferdinand Leigh Claiborne, at Natchez, the Governor expressed himself as follows in regard to the application of Richard Claiborne for the Concordia appointment:

> Major Richard Claiborne who professes to be a Republican, wishes the Judgeship of Concordia: It seems that his office at Rapide is not agreeable to him, and the reason I presume is, that it does not give him a comfortable support. But I am unwilling to send to Concordia an officer, who in any manner would interfere in the Elections, of the M. Territory and particularly one who would do so, in order to advance the cause of federalism; nor will I commission Major Claiborne if there should be just grounds to suppose, that he would pursue such a course.[11]

But there were other reasons why Judge Claiborne wished to be transferred from his post in Rapides. He was unpopular with the inhabitants of that parish, and before the end of 1808 he was indicted by the Grand Jury of the Superior Court, holding sessions in and for the Parish of Rapides, "for extortion and oppression in office". While these charges were pending, the Judge must have bombarded the Governor with letters requesting transfer to Concordia, for on November 8, 1808, the Governor addressed the following letter, marked "Private", to the Judge:

> Your several private letters, expressive of your dissatisfaction with your present office, & a wish to be appointed the Parish Judge of Concordia, have been received and read with friendly attention.

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[9] *Ibid.*, 54-68, for detailed list of fees which parish judges were authorized to collect for official acts. This act was approved April 14, 1807.

[10] Rowland, *op. cit.*, IV, 337; *Laws of Louisiana*, 1 leg., 2 sess. (1812-1813), 6.

[11] Rowland, *op. cit.*, IV, 216.

> I regret sincerely, that your situation at Rapide is so disagreeable, and that for the present, it is not in my power to place you in a more eligible position. I trust and verily believe, that the presentments against you "for extortion and oppression in office" are without foundation; But pending such accusations, (exhibited as they have been by a Grand Jury) were you to be named Judge of another Parish, your Enemies might attribute such nomination to an unwillingness *on your part* to meet the charges, and a disposition *on mine,* to arrest further investigation. I repeat, that I do not accredit the accusations against you, nor is my confidence *in your Integrity* diminished. But until time is given for the presentment of the Grand Jury to be enquired into, you could not retire from Rapide with the propriety, I could wish; nor would you (probably) be received in another parish, in character as Judge thereof, with all that confidence, which you would otherwise, be entitled to. With the best dispositions therefore to serve you, I am sorry, I cannot, (with the approbation of my own Judg'ment) at this time confer on you, the office of Judge of Concordia. That appointment has recently been offered to Doctor David Lattimore, & I have reason to believe, that he will consent to serve for a few months.[12]

These particular charges must have been dropped, or were not sustained after investigation, for the Judge continued to preside over the Parish Court of Rapides until 1812. He not only completed the four-year term for which he had been appointed, but on November 15, 1811, Governor Claiborne forwarded to him a new commission, presumably for another four-year term.[13] But with the admission of the Territory of Orleans into the Union as the State of Louisiana in 1812, the necessary reorganization of the court system brought Judge Claiborne's services to an end in Rapides.

The matter of tax collections which caused embarrassment to Judge Claiborne soon after he entered upon his duties in Rapides,[14] appear to have continued to trouble him, even after he had retired from the position. On December 22, 1812, the Louisiana Legislature approved "An Act granting to the sureties of Richard Claiborne further time for the payment of a certain sum due to the state", in which it was stated that the estate of J. W. Gurley and D. A. Hall owed a balance of $1061.73 of the territorial tax on lands and slaves for the year 1810, due and

[12] *Ibid.*, IV, 246-247.
[13] *Ibid.*, V, 381-382.
[14] *Ibid.*, IV, 337.

unpaid by Richard Claiborne, late Parish Judge of Rapides. The sureties, owing to their great distance from Rapides, were allowed an additional six months in which to collect the unpaid taxes due and make final settlement with the state treasury.[15]

This shortage in tax collections must have left in Rapides a bad impression of Judge Claiborne's ability to discharge at least one of the important duties of his office. The mere fact that his sureties were John Ward Gurley, Attorney General of the Territory of Orleans, and Dominick Augustine Hall, United States District Judge for the Territory of Orleans, proves conclusively that the leading members of the judiciary were convinced of his honesty and integrity. Moreover, Governor Claiborne likewise was convinced of his integrity, for in a letter, dated August 1, 1813, addressed to James Monroe, then Secretary of State, he requested that the claims of Richard Claiborne be urged upon President James Madison for a federal position. On this occasion the Governor said:

> I observe that a Bill is on its passage in Congress establishing a District Court at Mobile.—May I take the liberty to ask you, to make favorable mention to the President of Major Richard Claiborne for this State, as a Candidate for the office of Marshall for the Mobile District.—Major Claiborne was a meritorious officer during the Revolutionary War and has subsequently rendered public service in several civil employments.— He is now poor, dependant and in the vale of life;— But in the enjoyment of great activity of mind & body & fully competent to the discharge of the duties of Marshall.— I feel no delicacy in pressing the claims of Major Claiborne;— The connection between us, by *consanguinity*, if there be any, is so remote that neither can trace it & I speak of him with no *bias*, but that which a knowledge of his integrity his former faithful services, & his present dependant situation *has* excited.[16]

After leaving Rapides in 1812 Judge Claiborne went to New Orleans where he maintained a law office[17] and spent his spare time tinkering with inventions for the improvement of the means of navigating steamboats on the western waters. He convinced at least a part of his contemporaries of the practicability of his

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[15] *Laws of Louisiana*, 1 leg., 2 sess., (1812-1813), 6.

[16] Rowland, *op. cit.*, VI, 251. Whittington, loc. cit., XVI, 252, erroneously gives the date of this recommendation as 1816.

[17] Whittington, *loc. cit.*, XVI, 252.

"hinge or duck-foot paddle" as a means of propelling steamboats, as is evident from the following Act approved by the Louisiana Legislature on March 20, 1818:

> AN ACT TO GRANT TO RICHARD CLAIBORNE THE EXCLUSIVE RIGHT TO THE HINGE OR DUCK-FOOT PADDLE, WITHIN THE JURISDICTION OF THIS STATE FOR A LIMITED TIME.
>
> Whereas it appears to this legislature that Richard Claiborne is the sole inventor of the hinge or duck-foot paddle, to the improvement of which he has devoted much time and labour.
>
> *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the said Richard Claiborne shall have and enjoy the exclusive privilege of navigating, working or propelling boats by or with the aforesaid hinge or duck-foot paddle for and during the term of fourteen years within the jurisdiction or limits of this State, and any person or persons using the said hinge or duck-foot paddle within the jurisdiction or limits aforesaid, without special permission granted by the said Richard Claiborne, during the time aforesaid, shall be liable to damages, recoverable on suit before any court of competent jurisdiction within this State.[18]

The abovementioned patent was apparently never of any very great practical value, but it is an interesting incident in the long list of projects designed to improve water transportation. In justice to Judge Claiborne's service in Rapides, it must be said that he was not the only Parish Judge in the Territory of Orleans who was unpopular with the residents of his district, nor the only one who was unable to collect all taxes within the space of time allowed by law for that purpose. The date of his death is unknown to the editor.

William Miller, the recipient of the letters, was born in Pennsylvania. He came to Louisiana during the Spanish regime as a merchant. He was the partner of Alexander Fulton, and this firm obtained from the Spanish government the exclusive concession to trade with the Indians on the lower Red River,[19] with headquarters at the Post of Rapides. He married a daughter of Dr. Ennemond Meullion, the last Spanish commandant of that Post.[20] Miller was recognized as one of the most prominent of

[18] *Laws of Louisiana*, 3 leg., 2 sess., (1818), 198.
[19] Whittington, *loc. cit.*, XVI, 249.
[20] Mrs. William Cabell Bruce to the editor, August 8, 1937.

the American citizens residing at the Post of Rapides; and after the transfer of Louisiana by Spain to France, November 30, 1803, and its subsequent formal delivery by France to the United States, December 20, 1803, Miller was appointed special agent to receive for France the possession of the Post of Rapides from Dr. Meullion, Spanish commandant, and to hand it over for France to the United States. His commission for this purpose was issued by Pierre Clement de Laussat, French commissioner in New Orleans, under date of January 13, 1804. He had already been commissioned by William C. C. Claiborne and James Wilkinson, commissioners of the United States for the transfer of Louisiana, to act for them as their agent to receive the Post of Rapides for the United States, under date of January 7, 1804.[21]

After William Miller had executed this joint commission for France and the United States, he handed over the jurisdiction of the Post of Rapides to Dr. Meullion, former Spanish commandant, whom W. C. C. Claiborne had appointed as civil commandant of the Post under the American regime.[22]

But when the Legislative Council of the Territory of Orleans passed an Act, approved April 10, 1805, dividing the Territory into twelve counties and providing for a Judge in each of these counties to succeed the civil commandants in the various Posts,[23] Governor Claiborne appointed William Miller as Judge of the Court of the County of Rapides. Claiborne's letter and the commission issued to Miller were dated May 3, 1805, less than a month after the passage of the act.[24] Although Miller was not a lawyer, he was a man of ability and integrity and he retained the position of Judge in Rapides until 1807, about the time the Legislature set up the system of Parish Courts and abolished the former County Courts.[25] Richard Claiborne did not succeed him immediately, but was appointed to the position of Parish Judge of Rapides within a few months following Miller's retirement from office.[26]

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[21] See Whittington, *loc. cit.*, XVI, 239-242, for copies of these letters and commissions. Originals are in possession of Mrs. William Cabell Bruce, Ruxton P.O., Baltimore County, Maryland, who furnished copies to Mr. Whittington, and who supplied copies of them to the editor.

[22] See Whittington, *loc. cit.*, XVI, 242, on this point.

[23] *Acts passed at the first session of the Legislatuive Council of the Territory of Orleans* (1804-1805), 144-188.

[24] Whittington, *loc. cit.*, XVI, 247-248, for Claiborne's letter and Miller's commission. Originals in possession of Mrs. William Cabell Bruce, who supplied copies to Mr. Whittington and also to the editor.

[25] Whittington, *loc. cit.*, XVI, 247-249.

[26] See footnote 8, above.

After the American occupation of Louisiana William Miller sold his mercantile interests to his partner, Alexander Fulton, and retired to his cotton plantation near the present Lecompte, where he lived for a number of years. Later he removed to Kentucky, where he was living in 1816 and 1817, when Richard Claiborne addressed the first two of the three letters to him. He is said to have lived also in Ohio and Maryland, dying in the latter state. While residing in Kentucky he became interested in steamboats and river navigation.[27] This interest is reflected in Richard Claiborne's letters to him. He apparently returned to Rapides in 1818, as indicated in Claiborne's third letter.

William Miller appears to have returned to Rapides in 1818 to become manager of the Alexandria branch of the Louisiana State Bank. This bank was incorporated by Act of the Louisiana Legislature, approved March 14, 1818, under the title of "An Act to establish a State Bank, to be known by the name of *The Louisiana State Bank.*" The parent bank was located in New Orleans, with an authorized capital stock of $2,000,000, and it was required to establish branches, called "offices of discount", in Donaldsonville, St. Francisville, Alexandria, St. Martinsville, and Baton Rouge, to each of which branches a capital of $100,000 was to be allotted.[28] The tardiness with which the branches of the bank were put into operation is reflected in an Act of the Legislature, approved March 6, 1819, extending the time for allocating the full capital to the several branches beyond the six months specified in the incorporation act of 1818.[29] Claiborne's third letter to Miller also reflects this tardiness in putting the Rapides branch of the bank into operation.

William Miller was considered a prominent and permanent resident of Rapides in 1819, for on March 6th of that year the Legislature approved an act incorporating the "College of Rapides", and he is specifically named in the act itself as one of the first Trustees of the new college.[30] Just when Miller finally removed from Rapides the editor is unable to say. Nor is he informed of his later place of residence or of the date of his death.

The letters printed below reflect an enduring friendship established between William Miller and Richard Claiborne while both

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[27] Whittington, *loc. cit.*, XVI, 249.
[28] *Laws of Louisiana*, 3 leg., 2 sess., (1818), 78-90.
[29] *Ibid.*, 4 leg., 1 sess., (1819), 86-88.
[30] *Ibid.*, 104-110.

were residing in Rapides between 1808 and 1812. They had several interests in common. Both had been Judges in Rapides, and both retained their interest in the progress of that parish after they had removed from it. Both were interested in current politics and in the improvement of steamboat navigation on the western rivers. These mutual interests figured largely in their correspondence, as evidenced in Claiborne's letters to Miller.

The originals of the three letters printed below are in the possession of Mrs. William Cabell Bruce, Ruxton P. O., Baltimore County, Maryland, who is a direct descendant of William Miller. She has kindly furnished copies to the editor, for which he here records his sincere thanks.

Text of the Letters

New Orleans 13th Septr. 1816.

Dear Sir

With much pleasure I received a letter from you some weeks ago—and now thank you for it.

I see, that, notwithstanding the "Compensation business",[31] my old friend, Mr. Clay[32] is reelected to Congress, and I am glad of it, tho' it was in opposition to my relation Mr. Pope,[33] who, by the by run him confounded hard, and I am glad of that too, for it shows that they both stand high in their own country. Permit me to charge you with my respects to each of them, and say

"By fees he lives, by fees he moves
"For fees procure him what he loves—
"And tho' he lives in Hut or Cloister
"He'll drink his wine, and eat his oyster.

These are words for your mouth,— now hear what I have to say for myself—as I have said of you, a thousand and a thousand times, so I say of Mr. Clay and of Mr. Pope, "I shall be glad to see them."

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[31] The "Compensation Bill" was one of the chief issues before Congress at this time, and the attitude of candidates toward this measure figured largely in the congressional elections in several states in 1816.

[32] He refers to Henry Clay, the Kentucky statesman, whose home was near Lexington, Kentucky, at which place William Miller was then residing. For the best brief biography of Clay, see *Dictionary of American Biography*, IV, 173-179.

[33] He doubtless refers to John Pope, another resident of Lexington, who had served in the United States Senate from 1807 to 1813, who was Territorial Governor of Arkansas from 1829 to 1835, and was a member of the national House of Representatives from Kentucky from 1837 to 1843. *Appleton's Cyclopaedia of American Biography*, V, 68.

As I am full of saids and says,— d——n these words, how I hate them. They have done more mischief among men than all the rest of the words in the language put together. When we get into quarrels, disputation, or accusation, and quote authorities—it is you said, and I said, and I said, and you said, till both get aggravated, and we fall on with four points of a Virginia Pugilist—kick,—bite,—b-l-k,—g-g-e—or get our brains blown out like a Beast!

But it was said of Doctor Franklin[34] that he once lent a man a sum of money, with the injunction, that, as soon as he could possibly spare it, he was to lend it to another, and so keep the thing moving for common good. Now as the French were once charitable to the Americans,[35] why cannot we be charitable to the Mexicans and the Colombians likewise.[36] I have often thought of this thing, and wished I were, for a moment, the Zar Peter,[37] that I might say to the People, go—and if a North American would not go to Hell for Liberty, I'll be d-m-d! But the Government knows things better than I do—and I believe only wait for a fair moment to show their national patriotism.[38]

What we wish to be true, we are sometimes unwilling to believe—and I wish to believe that the report of the Firebrand[39] will be true against those Spanish Corvettes who fired upon her; but all is conjecture here yet upon the subject.[40]

About 3 or 4 weeks ago, at this city, the schooner General Bollivar, which was purchased under an order of sale from the district Court of the United States, was named the General Jack-

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[34] Probably Benjamin Franklin, the American statesman and philosopher of the previous generation.

[35] France had made an alliance with the United States in 1778 against Great Britain, and were instrumental in aiding in winning independence from England in 1783.

[36] The Mexicans and the Colombians were at this time struggling against Spanish oppression. There was a great deal of sympathy for the cause of these Latin Americans in the United States at this time, but the government was slow in taking any decisive stand in their behalf. New Orleans, home of Claiborne, was a center of this agitation for American aid to the Latin American patriots against Spain.

[37] The ruler of Russia, who ruled as an absolute monarch and consequently did not have to await the support of his people in making his decisions on any governmental matter.

[38] A reflection of the hesistancy of the United States authorities in aiding the independence movement in Latin America.

[39] The "Firebrand" was an American naval vessel which was being used illegally in escorting vessels carrying supplies to the Mexican insurgents operating against Spain. It was fired upon by Spanish naval vessels, which roused a storm of indignation throughout the United States. New Orleans, which was the center of operations in aid of the Mexicans, was bitter over this affair. See Harris Gaylord Warren, "The Firebrand Affair: A Forgotten Incident of the Mexican Revolution", in *Louisiana Historical Quarterly*, XXI (1938), 201-212.

[40] An excellent illustration of the difficulty of obtaining accurate information in New Orleans on naval operations in the Gulf of Mexico at this date.

son,[41] and fitted out under the character of a Merchant Vessel, but when she got to "Boheela de Pedra",[42] or some Spanish port, in that quarter, she was changed into an American Privateer, and went out and took a Spanish Vessel of force, and the Captor and Prize are now in the river coming up to Town. I do not know what the Court will do in beliggerant cases, but I suppose that the Spanish Consul will bring in his Libel, and then it will come to issue in some way. Again it is said that the Prize will be sent to a Mexican Port for adjudication. But it is a private affair and I may not have heard the whole truth, . . . (text blurred here) . . . you not to let it get into the papers.[43]

As my habits will not let me be idle—whenever . . . (text blurred) . . . nothing to do in my office, instead of lounging about, and going to coffee Houses, my mind leads me to my old Hobby Horse,[44] and I ride him equal to a Brentford Taylor. I have nearly finished my essay on Steam Navigation,[45] and when it comes out, if it doesn't beat Wilkinson's Book,[46] I will agree that Wilkinson and myself shall never write books again in this world. It shall too make a Felix[47] of every man who reads it. Again my "Planetary Battery" occupies much of my thoughts—for it is to be a Barrier to my country in all the waters of the United States.[48]

Mrs. Claiborne unites with me in every thing I can say to you and your family—and we pray God to bless you all a long time.

R. CLAIBORNE.

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[41] See Warren, *loc. cit.*, XXI, 201-212, for the activities of this vessel which was owned by Abner L. Duncan of New Orleans and employed in carrying supplies from that city to the Mexican rebels.

[42] Claiborne's spelling of "Boquilla de Piedras", the chief port to which supplies for the Mexican rebels were sent from New Orleans at this period.

[43] For details of privateering in the Gulf of Mexico and of the connection of personages of New Orleans in these enterprises, see Stanley Faye, "Privateersmen of the Gulf and Their Prizes", in *Louisiana Historical Quarterly*, XXII (1939), 1012-1084, and Alfred Toledano Wellborn, "The Relations between New Orleans and Latin America, 1810-1824", in *ibid.*, XXII, 710-794. These articles also reflect the great interest of citizens of New Orleans in such incidents as that mentioned by Claiborne.

[44] Reference to his interest in inventions of various sorts.

[45] See Claiborne's third letter below, dated December 10, 1818, for mention of publication of this essay in the *Chronicle* of New Orleans, and the attention which it had attracted.

[46] Refers to General James Wilkinson's *Memoirs of My Own Times*, which was published in three volumes in Philadelphia in 1816.

[47] Allusion to "Felix, the wise man" in an old fable.

[48] The editor has not discovered that this "Planetary Battery" ever proved a success in practice.

The steam boat which was burnt here is repairing with all possible speed. The City remarkably healthy. Business tolerable.[49] (Above letter addressed to "William Miller Esquire Lexington Ky.")

New Orleans Oct 14th 1817.

Dear Sir

"Out of sight, out of mind", is an old saying, but it is not so with me, for if I have a friend, I never forget him—and I can truly say that my family often think of you and your family, with great kindness. The summer is fleeting away—but indeed the citizens of New Orleans have suffered much by the late sickness with which it was visited.[50] I have kept within doors—and with the use of Callomel & Jallop, and Salt & water, and Jennings portable Bath,[51] I preserve the health of myself, my wife, and my children.

In the course of the next month the absentees will begin to return to town, for the sake of business, & to eat the Barrataria oysters.[52]

New Orleans may be compared to a Plate of Honey. Thousands of insects come & satiate themselves with the sweet food, and die—but where one dies, a thousand visit the delicious repast. So it is with men—where their interests lie, they'll come to the place, tho' death may stare them in the face.[53]

Success to Steam boats—and I hope you will come down in one of them, at the meeting of the Legislature, when the city will be alive with information, sentiment and amusement.[54]

General Wilkinson is here and going on with another Volume of His Memoirs.[55] Tho' I cannot declare myself an admirer of

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[49] Steamboats and the condition of health and business in New Orleans were doubtless items of great interest to gentlemen engaged in trading down the river to New Orleans in those days.

[50] New Orleans was afflicted with scourges of yellow fever nearly every summer during this early period.

[51] An interesting insight into the remedies used by citizens of New Orleans to escape the yellow fever.

[52] At this period all those who were able to leave New Orleans went to the country to escape the heat of the city and the expected visitation of yellow fever; and business was at a standstill in the city for several months during the summer and early fall.

[53] An interesting insight into the reasons for the rapid growth of New Orleans in spite of its generally accepted reputation for insalubrity in this early period.

[54] The Legislature usually convened in January, and during its sessions the city was alive with political, business and social activity.

[55] There is no record of more than the three volumes of the original edition published in Philadelphia in 1816; but the General may have been engaged upon a revision of his work preparatory to bringing out a new edition.

some of his personalities, he speaks of a degeneracy of morals in the American character, I have long seen and felt myself. In sentiment 1817 and 1776 are as unlike each other, as a black Pea is unlike a white Pea. But it is as natural in man to change from former principles and manners, to new ones—as it is for the sparks to fly upwards and wealth, and corruption, and Faction will, one day surely send our beautiful Republic to the common grave of "all the capulets!"[56] The patriots of '76 will be gone—and their offspring must fight their way in the vortex of aristocracy as well as they can—and I do not know whether it would not be mercy in me to instill into my son the doctrine of "legigimacy",[57] in time for the change. Were I with the venerable Jefferson, to know the his opinion of men & things of the present day, I think I should hear him exclaim—"Oh!, what a falling off was there."[58] Depend upon it Sir, we bought our late Peace[59] at too cheap a rate! It got us a name, but it turned out speculators in abundance!

Judge Hall[60] took his departure from New Orleans on the 18th June last, on a visit to the United States,[61] and is expected to return to his Court, shortly, when the legal business of his department, will get into progress again. It can not be denied to him that he had a right to the recreation of the trip he has taken—for he has been faithful in his services 13 years—but his friends here all wish to see him again.

Mrs. Claiborne sends her warm esteem to your family—and I beg you to be assured of my warm regard.

R. CLAIBORNE.

P.S. If you come down in the winter, bring a few apples to make "Apple Toddy".[62] I am almost tired of wine.

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[56] This is an excellent illustration of the tendency of old men to "pine for the good old days", particularly if their later condition was none too comfortable.

[57] "Legitimacy" is connected with the "divine right of Kings", and there was a tendency in some quarters in this period to believe that a republican form of government would not endure in the United States.

[58] Thomas Jefferson's opinion on political and other tendencies in the United States was sought and respected by many of his contemporaries as long as he lived.

[59] The war of 1812 with England was ended by the Treaty of Ghent, signed December 24, 1814.

[60] Dominick Augustine Hall, United States Judge for the District of Louisiana, who was an old friend of Claiborne and who had been one of his sureties when he was Parish Judge of Rapides.

[61] At the present date this expression is amusing, but in that early period it was common for people to speak of going from Louisiana to the "United States", even though Louisiana had been a part of that Republic since 1803.

[62] Apples were not grown in Louisiana, but after regular steamboat traffic was developed on the Mississippi they were supplied to New Orleans from the Old Northwest.

Wm. Miller Esqr.

(Above letter addressed to "William Miller Esquire Lexington Kentucky To be left at W. Lamphears".)

New Orleans 10th Decr 1818.

Ah! my friend, there was a time when I predicted the popular rise and progress of the Parish of Rapides; and went so far as to publish my ideas to the world upon the subject, a copy of which you can see in the possession of Captain Sprigg,[63] which I sent to him a year or two ago, with the suggestion to have it printed in Alexandria with a description of the progress of the Country since that time, but I have seen no such publication. It might be well to do this still, to give the country its due character, but to benefit many who would migrate to it. Had it not been for some ilnatured persons in the Parish, I might have been there still, and derived advantages which they drove me away from—[64] but I have a consolation that I left respectable and good friends, and that Providence did not neglect me in this quarter.

To you, my dear friend, I shall always be indebted for your advice to go to New Orleans, and take luck as it might turn up. I have an office which keeps me employed, which is a great thing for the preservation of morals, and gives me the means, with economy and industry, to support my family, and have a mouthful for a friend,— but still I shall always think of old Rapides, and wish I had not been persecuted and driven out of it.

My time is occupied between my office and my invention for propelling Boats,[65] and so far has the latter taken possession of the public mind, I am promised, by a friend that I shall have an experiment by steam and the engine is probably now on the way from Baltimore for the purpose.[66] It is well known that, 30 years ago I predicted the success of steam navigation at some period or other, and it had so happened. Again, I say of the wheel by which steam boats are now propelled, that Philosophy was not going to stop with that device altogether—and such is the fact,

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[63] Reference probably to Horatio Sprigg, who was a prominent resident of Rapides at this time. Whittington, *loc. cit.*, XVI, 432.

[64] Reference to his unpleasant experiences while Judge of the Parish Court of Rapides, as explained in the introduction to these letters.

[65] Reference to his invention of the hinge or duck-foot paddle.

[66] On March 20, 1818, the Louisiana Legislature had passed an act granting to Claiborne the exclusive right of using his invention within the limits of that state. See *Laws of Louisiana*, 3 leg., 2 sess., (1818), 198.

for there is more said about the principle of the Hinge, or the collapsing of the Duckfoot than has ever been said about the wheel since it has been used to boats. Since I published my Essay on Steam Navigation[67] in the Chronicle here, I can see it spoken of in the northern Papers, and reverberated back again on me, with approbation. Encouraged thus, it is a confirmation of my own judgment—and I shall go on to devote all the time I can spare from my other business, to the progress of the Invention. A trial by steam will set the question at rest.

An able engineer who is sent here by Mr. Latrobe[68] about the Water works of the City, has seen and contemplated my models, and says it will be a very simple thing to make an experiment—and, for the first time, I have the consolation to find that the burthen of expenses will not be thrown on my own shoulders, but will be borne by others. It is to be regretted that the steam boats now in operation on the Mississippi and its waters, have been so much impeded by the want of water to float them, but as the lowness of the waters is so remarkable an instance in their history, it is to be hoped that it will not happen again for a long time.[69]

I shall rejoice indeed to hear of the arrival of your Steam boat from Pittsburg at Rapides—and I hope will bring you and your family to New Orleans.

I mentioned, just now, to a friend, why it was that money was not sent to the Bank of Rapides?[70] He said he did not know, but seemed to signify he was afraid it would be some time first.

I see a great deal published in various quarters in the States about this "Banking Business"—[71] and I fear it will cause some

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[67] In his first letter of September 13, 1816, Claiborne says that he has nearly completed this "Essay".

[68] Benjamin Henry Boneval Latrobe constructed the first water works for New Orleans. On March 6, 1819, the Legislature of Louisiana approved "An Act for the incorporation of the New Orleans Water Company", according to the terms of which he and his associates were incorporated for that purpose, with a capital stock of $120,000. See *Laws of Louisiana*, 4 leg., 1 sess., (1819), 100-104.

[69] Low water at certain seasons of the year long continued to impede steamboat navigation on the Mississippi and its tributaries, and the difficulty has not even yet been entirely eliminated.

[70] See introduction to these letters for establishment of a branch of the Louisiana State Bank at Alexandria. This is undoubtedly the "Bank" to which Claiborne refers.

[71] There was a wave of enthusiasm for the establishment of state banks in many parts of the Union following the close of the War of 1812, and many of them became insolvent as a result of the financial panic of 1819 and the years immediately after.

trouble in the end, for it has been, in my opinion, been extended to a profuse degree, and attended with too much mercenary speculation.

Nor will you, when you open the Bank of Rapides,[72] find it a bed of Roses; for so prone are men every where to get hold of money at any rate if they can, the President and Directors will find themselves pressed with applications from every quarter.

Mrs. Claiborne and myself feel ourselves thankful for the friendly wishes of your family, and beg you to receive ours in the most affectionate return. To our other friends who may feel that sentiments towards us which you do, we request you to mention our best compliments.

R. CLAIBORNE.

This is an answer to your favor of the 20th Nov. last.
(Above letter addressed to "William Miller Esquire, Rapides La.")

[72] Upon this statement the editor bases his belief that William Miller was returning to Rapides in 1818 to take charge of the branch of the Louisiana State Bank in Alexandria.

LOUISIANA LINGUISTIC AND FOLKLORE BACKGROUNDS*

By ANDRÉ LAFARGUE

Some time ago it was my good fortune to attend a ceremony in the Vieux Carré of my beloved New Orleans, in the course of which ten different flags emblematic of the various regimes under which Louisiana has existed were presented by very beautiful and charming young ladies from the various sections of the North, Central, and South American portions of the western hemisphere to one of the institutions of our French Quarter. The ritual was carried out with a richness of detail and color and with a gracefulness truly typical of this Southern metropolis. As each flag was unfurled, held aloft and presented, the Honorable James J. A. Fortier, the son of the erudite and distinguished Alcée Fortier, our Louisiana historian, commented upon its appearance, its design and its significance. The young and attractive standard-bearers, after the presentation had been accomplished, sat in a group, with the silken flags spread and held before them. Clad in their white Grecian tunics they presented a most appealing and never-to-be-forgotten picture; but what impressed me above all was the fact that Louisiana could really and historically boast of ten flags which successively flew over its territory. In their chronological order they were: The flag of Spain as carried by Hernando de Soto in 1541, at the time of the discovery of the Mississippi River; the lily-bedecked flag of France, as unfurled by Robert Cavelier de La Salle, when he discovered the mouth of the great Father of Waters in 1682 and when he took possession of the entire Mississippi Valley and of the adjoining territory to the right and left, naming it Louisiana, after his royal master, Louis XIV of France, the "Roi soleil"; the flag of Spain as flown over Louisiana, after the province had been ceded to that country by France through the treaty of 1762; the Union Jack of England, unfurled over the territory east of the Mississippi and what is known today as the Florida Parishes of our State, subsequent to the signing of the Treaty of Paris of 1763; the glorious tricolor of France, raised on the Place d'Armes, today Jackson Square, on November 30, 1803, on the day when Spain

* Read before the Louisiana Historical Society at the monthly meeting, on January 29, 1941.

formally retroceded to France the Louisiana colony; the United States flag of fifteen stars and fifteen stripes, raised on the same spot in Jackson Square on December 20, 1803, twenty days after the retrocession ceremony to which I have just referred; the individual flag of the Florida parishes, banded together under the designation of "West Florida", the Republic of West Florida, a lone star on a blue field, which was raised on September 23, 1810, but which was soon lowered to make room for the national flag of our United States; the national flag of Louisiana, a very elaborate one with thirteen stripes, four blue, six white and three red, with a field of red in the upper, near corner containing a single yellow star on a red field, which Louisiana unfurled in 1861 when she seceded from the Union; the flag of the Confederate States of America, under which Louisiana fought and bled; and finally our present state flag, officially adopted in 1912, with its blue field and emblem, the mother pelican feeding her young ones, with the surrounding motto, "Union, Justice and Confidence". Ten flags, representing as many racial, political and historic regimes. Is it a wonder, therefore, that historians have always referred to Louisiana as being one of the most colorful, picturesque and interesting States of the Union? The political background of our State, its origin, its physical attributes, its geographical boundaries, its topography, and its climatic conditions have been woven and re-woven into a pattern of kaleidoscopic and colorful intensity.

I take it that the character and scope of this paper, the time limitations placed upon it, the useful discussion which will follow its reading, the individual subjects of a kindred nature which will be dwelt upon by others in more detailed fashion, will forcibly restrict my efforts in outlining the background of the languages and dialects spoken in Louisiana, and the customs and usages which prevailed within its borders. The present State of Louisiana, but an infinitesimal portion of the former colony or what was known politically as the Province of Louisiana, under present conditions might be termed the reliquary of French culture and French civilization as brought to the Mississippi Valley by the sons of France directly from the mother country or after a sojourn in what was then known as New France or Canada. In my opinion it is well-nigh miraculous that we should still have in New Orleans and in the adjacent parishes so many people who speak French as elegantly and as flawlessly as they do in this year of Our Lord

1941. It must be borne in mind that geographically we are so situated and so surrounded by what I have once referred to as the Anglo-Saxon tide of civilization and culture that we should have been swept over and destroyed long ago as a French-speaking group. It is a matter of pride with us, and rightly so, that we should have remained bilingual under most adverse circumstances. Had we been living in the New England States, in those particularly that border upon the frontier line of the Province of Quebec in Canada, had we been close to our French-speaking fellow men in the great northern dominion or to our fellow citizens of Canadian descent who have settled in the New England States and who represent today a racial and ethnical group of more than one and a half million people, whose daily language is French, it would have been perfectly logical for us to have preserved and maintained, in its greatest purity and in all of its subtle character, the French language as so many of us speak it and write it today. But living on the Gulf of Mexico, on the coastal limits of the United States, separated as we always have been by over twelve hundred miles from those who speak French in Canada and in the New England States, with a French immigration which has completely ceased to exist for the last thirty years, and which subsequent to the Confederate War was of an extremely sporadic and uncertain flow coming mostly from the Pyrenees region of France, by all the rules of logic and of reason the French language should have disappeared from our midst long ago.

I am rather amused over some of the statements and writings of French newspapermen, authors, lecturers and other men of letters, who come here, visit us for a few days and return to France shaking their heads sadly and proclaiming through articles or works of a literary character, usually known as "Impressions of my visit to Louisiana", that French is fast dying out in Louisiana and that it is hopeless to expect us to maintain and preserve the language of the old mother country. I have known of a certain French writer of great note and ability, who came here to New Orleans, visited our city, met some of our people of French extraction, and, in the chapter that he devoted to the Crescent City, he speaks merely of the romantic charm of our cemeteries and of his visits to the Negro institutions of an educational character to which he was conducted. Some of them have headed articles entitled "The agony of the French language

in Louisiana' and others have selected as a title for their writings "Louisiana is lost to France", overlooking the fact that since the 20th of December 1803, one hundred and thirty-eight years ago, we have been a parcel of the United States of America. Of course, in justice to other French visitors and writers, like André Siegfried, Bernard Fäy, André Maurois, to mention but a few of them, it should be stated that the true situation in respect to the maintenance and preservation of the French language in Louisiana has been fairly and truthfully depicted and reported. Fortunately, every French writer or lecturer who comes to New Orleans is not interested solely in the Negro question or in the aspect of our cemeteries. I have noticed that it was particularly the French writers who were fond of visiting cemeteries or who were intensely interested in the Negro question and its so-called solution who have displayed such gloomy thoughts and indulged in such sad prognostications. Their mortuary and other activities in New Orleans had influenced considerably their viewpoint and made them draw a dark picture of the situation. Let us state right here that it is inevitable that French should not be spoken presently by as many of my fellow citizens as would seem desirable to those who come here from the old mother country and who forget that Louisiana is no longer a French colony. No one knows what the future of the French language in Louisiana will be. We still have thousands of people in New Orleans and on the banks of Bayou Teche, Bayou Lafourche, and likewise on those of the Mississippi River immediately above and below New Orleans, who speak French, who understand it and who write it. At the Louisiana State University and at the Southwestern Louisiana Institute, two new and powerful centers of French culture, education and instruction have recently been created and are functioning most efficiently. Here in New Orleans, at Tulane, at Newcomb and at Loyola, as well as in our high schools and through the efforts of the Franco-Louisiana Alliance and of the French Union, the French language is being taught by able professors. Since the last World War, I have found that the children of purely American descent or Anglo-Saxon origin seem eager to learn French. Further efforts, further plans are being made and formulated looking to the preservation and maintenance of the French language and of French culture in our midst. The prospects are promising and seem to belie those who predict that the French language within the near future will no longer be

spoken in Louisiana. May we not call them, as the French themselves would, *prophetes de malheur* (prophets of ill omen)?

The Spanish regime lasted from 1769 to 1803. Spanish influence, as a background, is not reflected in our language. Few of the families of Spanish descent have retained the use of the Spanish tongue. Those who speak Spanish today in New Orleans, with few exceptions, are members of the Mexican, Central American or South American colonies. The Spanish regime has left its indelible imprint upon our architecture but not upon our language or upon our customs. The Spanish administration has also left traces of its jurisdiction over Louisiana in some of our jurisprudence. I do not find that any writer or author of note has dwelt to any extent upon Spanish folklore or Spanish influence in Louisiana, linguistically or otherwise. We may have a few expressions of Spanish origin in our daily language, but they are very scarce.

The original settlers, those who came after Robert Cavelier de La Salle, the founders of Mobile, Biloxi, Fort Rosalie—today the city of Natchez—and of New Orleans, necessarily spoke a rude and martial language. Their French, in the pioneering days, was very markedly influenced by their surroundings, their work, the perils which they were made constantly to face, and the long absence from the mother country or from the refining influence of the home. Their language must have been one of harsh and imperative character, even though some of them had been schooled in the language of *La Belle France.* Most of them were of ordinary extraction and not highly educated. The leaders, like Robert Cavelier de La Salle himself, the gallant Tonti—he of the iron hand and gauntlet—, Fathers Zenobe and Athanase, Iberville and Bienville and their brothers, the monks and the missionaries that accompanied the earlier expeditions, had acquired educational attainments of the highest order for the times, but the rank and file of the explorers and settlers, of the founders and pioneers, spoke the rude and uncultured French of Normandy, Brittany, the Poitou and the Saintonge sections of the mother country, from which most of them came. They were hewers and builders, blazers of new trails, or they were the hardy and fleet-footed *coureurs de bois,* first messengers, human relays, who every now and then brought word sustenance or provisions to the isolated colonies in Louisiana from faraway and well-nigh inaccessible Canada.

Had it not been at times for their help, both material and moral, the early Louisiana establishments might have perished, as they were not being regularly revictualed or assisted by the mother country. Louisiana owes a great debt to Canada for such help in the trying days of pioneering and early settling.

In their gatherings, meetings, and even in their private residences or barracks, the early builders must have had scant time to indulge in occupations or activities which could have borne the stamp of what we today refer to as folklore. From 1682 to 1699 nothing was done to complete the work of discovery of the unfortunate de La Salle, who was murdered in 1687 before ha had been given a chance to found a single settlement of importance in the newly named and acquired vast territory of Louisiana. And from 1699 to the date of the founding of New Orleans in 1718, we know very little of the customs, usages and manners that prevailed among these uncouth but valiant-hearted sons of France. It would have been very interesting and instructive to know to what an extent their dealings or relations with the aboriginal tribes influenced them in their talk and daily customs. The same is true of the relations of Bienville, the founder of New Orleans, with the Indian tribes that he met, whose language and customs he learned and whose brave men he admired, as he has stated in his many reports to his superiors. Bienville knew the Indians better than any other European who came to our shores. We can glean very little by way of folklore from his routine, precise and military reports.

The Indian folklore of Louisiana is mostly of a legendary character and consists of a few songs, a few tales that have been carefully preserved. The Caddo Indians of northern Louisiana, the Attakapas, the Natchez, the Chotaws, warlike and cruel men, the Bayougoulas, the Chetimachas, and some of the tribes that lived in what is known as the Florida Parishes, or in the parishes north of Lake Pontchartrain, have left us some of their songs, tales and legends. My esteemed and distinguished friend, Dr. William A. Read of the Louisiana State University, has preserved several of them for us. The Dorsey collection of Caddo Indian traditions is perhaps the most valuable work on this subject.

Some forty-five years ago I remember having attended one of the last tribal meetings and gatherings of the Indians who lived

in St. Tammany Parish near Bayou Bonfouca or Bayou Lacombe, and who had invited to their powwows representatives from the remnants of tribes in Mississippi and in Alabama. Some of them doubtless had been evangelized by the good and holy Abbé Rouquette, who lived among them and who had adopted to a large extent their language and customs. Concealed in a very high tree, which I had climbed with two of my young friends, I waited in a most uncomfortable and cramped position for several hours before the weird and picturesque spectacle began. I saw the red men, nude and painted from head to foot, with their tomahawks and feathered headgear, indulge in the Serpeant or Snake dance, the Eagle dance, the sun-worshipping and the rain-calling footsteps, while the womenfolk, attired in gaudy and fanciful dresses, were preparing, in huge kettles of the type used by sugar planters in the days of the open kettle mode of making sugar, powerful concoctions of coffee mixed with taffia or crude whiskey. I have a very fair recollection of what took place, but time and the scope of this paper do not allow me to refer in detail to these rituals. Nor can I tell you of the beautiful legend, which gave its name to Chinchuba—"The Alligator's Tail"—the delightful little village that formerly nestled in the huge piney woods that separated Mandeville from Covington. Today Chinchuba, where the deaf mutes of Louisiana had been taken care of with such tender and efficient solicitude by the good nuns of Notre Dame and where Father Mignot, the beloved curate of the St. Louis Cathedral, had a vast rural establishment which my father was in charge of for several years, is but a memory of the past; a well-paved concrete road to Covington has made it very convenient of access but has robbed it of its quaintness and savage character. Not far from Chinchuba is located, or was located, the rude hut or chapel where Father Rouquette ministered to the physical and spiritual wants of his Indian children.

Of course, the most colorful of all folklore backgrounds in Louisiana is the one furnished by the Acadians in the Teche country and by the Negroes who lived in southern and northern Louisiana. So much has been written and said about Negro songs, Negro spirituals and Negro incantations of a more or less authentic character, that I do not propose to dwell upon the subject to any extent. The influence of the French language upon these Negro songs and spirituals, Negro tales and legends, is

very markedly visible. Professor Alcée Fortier has commented most ably upon the subject, and other writers of note have established the proper distinctions between the Creole dialect or Negro patois and the everyday quaint language used by the Negroes who were slaves or employees of plantation owners who lived in the Florida Parishes or in the northern section of the State.

The tales and legends of these simple-minded and kindhearted folks have been preserved and reproduced by those who were more eminently qualified than I am to deal with the subject. I was brought up in my early years by an old Negress, formerly a slave of my grandfather on my mother's side. Her name was Zabette. She was not quite dark skinned. She was rather a mulattress of the darkest hue. She must have had some white blood. Zabette was never able to tell me how old she was, and when I would suggest in a teasing way that she might be a hundred years old, she would answer laconically, *"pet ete bin"* ("maybe so"), which would take my thunder away from me. I have a distinct recollection of her sitting all night long in front of the fireplace in the room in which I slept, and making coffee, which she sipped and drank with evident delight but in parsimonious portions. I was then about six years old. From Zabette I learned my first lessons in the hideous rites and customs known as voudouism, which Lyle Saxon and others have fully described in their colorful and romantic books.

When I had not behaved properly during the day, Zabette, as I would undress and get ready to go to bed, would say to me: *"Ah, tit mousieu. Vou pa gentil jordi. Grand Macandal et so pitis va prin vous."* ("Ah, little master. You did not behave well today. The Grand Macandel with his little ones will grab you.") As she had previously explained to me that the Grand Macandel, the high priest or divinity of the voudous, could assume the shape of a serpent or of a huge flame, I would hastily and tremblingly look under my bed to ascertain that a mother snake and her little ones were not hidden thereunder or that I did not see small bits of fire dancing around a huge flame. My good father put a stop to such further warnings on the part of Zabette and to further cups of coffee which every now and then she brought me and which of course kept me awake, playing havoc with my health and more particularly my nervous system.

Voudouism and its practices would require a lengthy treatise in connection with folklore in Louisiana. I am of the opinion that a great many of the atrocities and bloodcurdling customs attributed to voudouism have been exaggerated. Of course, there were some whites who unquestionably were put to death in revenge for either actual or fanciful wrongs which they may have done to their Negro slaves or servants. The custom of slipping a *gris-gris* or amulet, with its evil power, under a pillow in your bed or under the mattress, was one that certainly was resorted to, and in some cases the *gris-gris* contained arsenic, belladona or other poisonous drug, mixed with foul and unmentionable ingredients of a rather harmless character. Death could be brought about that way through slow and nightly inhalations of the deadly drugs in powdered form, but I do not think that the holocaust was the one referred to by some writers and particularly emphasized by Marie Laveau, the so-called Queen of the Voudous, so that she could very craftily and profitably ply her trade of *gris-gris* maker, through which she merely made more money than as a hairdresser. Voudouism in its palmiest days was an instrument of terrorization made use of very cunningly by those among the Negroes who had assumed power and authority. The Germans of today, who are past masters in the art of terrorism, would have resorted to it in the days when it flourished, had they been able to do so. The rituals, the incantations, the chants, the dances, the sloppy gumbo served at such ceremonies, in which toads and dead serpents were cooked over a slow fire, were brought over as customs from the West Indies, mostly from Santo Domingo and that portion of the island known today as Haiti, where they still flourish. They were of a character and of a weird aspect chosen specially for their marked influence upon the simple-minded and ever superstitious Negroes. Moreover, they appealed to their sense of imagery, of ceremonial and of pageantry. Music—chants, songs, dances, choruses—can be traced directly to the voudouistic rites as practiced in Louisiana.

From these heathenish and hideous practices, let us now turn to the consideration of the refreshing and charming picture presented by the Acadian folklore of Louisiana. Others certainly have dwelt upon the subject in the course of this convention and have just as certainly done so with greater competence than I have. I must say, however, that I have a deep and lasting regard

and friendship for the descendants of those who at the time of what is picturesquely and characteristically referred to as the *grand derangement* (the great trek, or exodus) from Nova Scotia to Louisiana, came to us after undergoing hardships that certainly must have tried their bodies and souls most sorely, and settled in agricultural simplicity on the banks of the two beautiful and legendary bayous, Bayou Teche and Bayou Lafourche. They brought with them customs and manners which they had inherited mostly from the province of Normandy in France, from which they had emigrated to Nova Scotia. They were a set of frugal, thrifty, kindhearted, hard-working, and hospitable people. These many commendable traits are reflected in their daily lives and occupations and, naturally, in the folklore to which they have given rise. Some of the early Acadians, so brutally expelled from Grand Pré and their native villages on the Basin of Minas and in the adjacent country, settled along the Atlantic coast. We find them in some of the New England States, in Maryland, in Virginia, and in Tennessee, but the ethnical group that seems to have preserved its characteristics with greater intensity than the others, and which has of course been immortalized in Longfellow's soul-inspiring *Evangeline,* is the one that settled in Louisiana, in what is known today proudly as the *Pays d'Evangeline* (Country of Evangeline). The simpler and more enduring manners and customs of the early Acadians, I am sorry to state, are fast disappearing. The Evangeline Country, like my beloved New Orleans, is fast becoming Americanized. The process of modern American civilization and language by way of assimilation is inevitable. Again do I say that it is remarkable that thousands of Acadians are still speaking the quaint language of their forefathers, a mixture of old Norman expressions and of newly adopted ones, which sometimes none but the initiated can properly understand. The songs that the early Acadian pioneers in Louisiana sang were those that their Norman ancestors cherished and which still are being sung in the villages, towns and cities that dot that section of France known so aptly as *La grasse et belle Normandie* (Fertile and beautiful Normandy). Some of these songs under the influence of time and conditions of a topographical or climatic character have undergone variations, but their basic music and words are the same. *Il plut bergere, Cadet Roussel, Malbrough s'en va t'en guerre, Compagnons de la Marjolaine, Les cloches de Corneville* are sung today in the purest

French or in the Acadian language, which after all is a modified form of the French language as spoken in the seventeenth or eighteenth centuries. Some of the expressions used by the *Père Gaspard* in *Le cloches de Corneville* are still current on the banks of Bayou Teche.

The affability and the hospitality of the Acadians in Louisiana have become proverbial, and justifiedly so. One who has visited them as often as I have knows that the traditions of the ancestors in that respect are lived up to. I am of the opinion that the early Acadian settlers were sparing of words and gestures. They certainly were not as exuberant or as talkative as some of their descendants are today, and I do not mean any unfair criticism when I make this statement. It is evident, however, that the Acadians of the days of Evangeline and Gabriel Lajeunesse had graver and more acute problems to solve than those of today. They were called upon to establish farms and plantations in well-nigh virginal country. They were also builders and hewers, who had less time for the gentle art of conversation than do their descendants of today; but when the day's work was over they would assemble on the banks of the historic Bayou or in one or another's rudely constructed home, and wiping the sweat from their brows they would comment upon the day's doings and achievements, and after mealtime would sing the old songs that would bring them back in thought and in spirit to Grand Pré and to the villages which they had founded and from which they had been ruthlessly torn away.

In their daily language, even of today, the earlier occupation of the ancestors reveals itself. The sons of Normandy and some of Brittany who emigrated to the bleak and forbidden shores of Nova Scotia and by dint of hard and consistent work had founded lovely and peaceful villages and towns that clustered around Grand Pré, had previously sailed the Seven Seas. They were descendants of navigators, of hardy sailors, of men for whom the mighty deep held no terrors, and naturally expressions of a nautical character are to be found in their daily language. The words *larguer* (to cast off), *amarrer* (to make fast), *naviguer* (to navigate) are constantly to be met with in the Acadian tongue. They are indicative of the occupation of the ancestors, of their seafaring lives. I shall never forget how pleased I was to hear a mother referring to her daughter, dressed as a bride, as *Une jolie goëlette bien gréée.* She pointed out to me her daugh-

ter, all dressed up in her bridal grown, and with motherly ecstasy said: *"N'est-ce pas qu'elle est une goëlette bien gréée"* ("Isn't she a pretty ship well dressed"). The word *gréer* is a nautical expression which means to fully equip a ship, with a mast, her sails, ropes, pulleys, etc. A *geölette* is a trim two-master sailing vessel. Acadians very often say also, in referring to a contemplated trip either by rail or bus: *"On s'embarque"* ("We are going aboard"). And so it is that through heredity these farmers, planters and peaceful agricultural people still speak in terms of the sea. They have had also their legend, their tales of the *loup garou*—the big bad wolf—, and the older generations lived exclusively and quietly in their villages strung along the banks of Bayou Teche and Bayou Lafourche or in the immediate vicinity. Acadian folklore of that section is part and parcel of our Louisiana patrimony. I could dwell upon the subject exhaustively, but time forbids.

To sum up, may I say that the historical, political, ethnical, racial and climatic factors that I have referred to above have given Louisiana a linguistic and folklore background of the richest and most varied pattern. In my opinion, the most potent of these factors is the bilingual regime under which we have lived now for so many years. The true Creole is a bilinguist. We still have in our midst many Louisianians who are thoroughly familiar with both French and English and who think and speak in terms of both languages,—a truly remarkable achievement and one of which we have every reason to be proud. Were it not for our French ancestry, the folklore that has enriched our native State would be sadly lacking in its main characteristics. The sons and daughters of Louisiana, particularly those of French descent, may well look back to the past with a mingled feeling of pride and satisfaction.

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PISTOLS FOR TWO, COFFEE FOR ONE

By JOHN SMITH KENDALL

I.

Although for the better part of a century, public opinion sanctioned the duello, it must not be supposed that there was in Louisiana no opposition to the practice. As a matter of fact, there were frequent and strong expressions of disapproval, even by men who, at one time or another, found themselves compelled to accept or transmit a challenge. In 1818 the State Legislature passed very drastic laws on the subject, but they were not enforced. In fact, in 1840, when a young American named Trouett was arrested for having killed his adversary, a man named Paulin Pruett, in a duel of which we shall speak presently, his attorney pleaded the fact that the existence of the law was entirely unknown both to himself and to his client. Nevertheless, from that time on, arrests were increasingly frequent, or, at least, the authorities went through the motions of arresting duelists or those suspected of intending to take part in a duel. There was even a society organized especially to combat a practice so disastrous to public morals, and many prominent people became members thereof, although their influence does not seem to have been very effective in lessening the number or the ferocity of these affairs. At any rate, public opinion was beginning to react against the duel.

In spite of which dueling went on. There was, for example, the Pruett-Trouett duel referred to above. It was fought on June 16, 1840. The cause of the quarrel is not known, but the two adversaries met one morning on Bayou Road, and fought it out in the presence of a large crowd of spectators. They were placed five paces apart, each with two loaded pistols, one in each hand. It was agreed that, at the word, they should wheel about and discharge one pistol each. They were to continue to do this until one of them fell; for the condition of the encounter was that neither should leave the field until his adversary had been killed.

Pruett was attended by two Creoles, the famous fencing master Labourette, and a man named Perez; Trouett's seconds were

Messrs. Crozat and Latour: Crozat, recorder of births and deaths for Orleans parish, and Latour, popular politician and wit.

They took their places back to back.

"Are you ready?" asked Crozat.

"Yes."

"One! Two! Three!" began the fatal count. "Fire!"

Instantly both combatants whirled about, brought their weapons up to the proper level, and discharged them. Pruett shifted his second pistol over from his left to his right hand, but in doing so, it accidentally went off. Trouett smiled sardonically, lifted his pistol, and deliberately took aim.

"Don't shoot!" cried a voice from among the spectators. "It is assassination!"

Crozat glared at the speaker. "My principal has the unquestionable right to fire. Let anyone who disputes my statement step forward. I have pistols here, and will be glad to settle the matter with him here and now!"

There was no reply. Turning to Pruett, Crozat signaled him to proceed. Pruett, calm but pale, realizing that his hour had come, put his hand on his heart and ejaculated, "Fire!"

Trouett composedly pressed the trigger. The bullet struck his adversary in the chest, passed entirely through his body, and lodged in the left arm. Pruett fell, and in five minutes was dead.

"Gentlemen," said Crozat, turning to Labourette and Perez, "you have been the cause of this unhappy young man's death. Had you appealed to our sense of mercy, we would willingly have spared his life. But you did not. The duel therefore had to proceed. We regret the result, but hold ourselves blameless."

And so, too, did the community. For although Trouett was arrested and tried, he was acquitted. At the trial Trouett was represented by Cyprien Dufour and Charles Bienvenue. The prosecution was in the hands of Etienne Mazureau and Pierre Soulé. The proceedings became a sort of oratorical contest between these distinguished advocates. Mazureau's address to the jury consumed six hours, and the others did almost as well. Even Judge Canonge's charge to the jury was long and eloquent. The jury retired. It deliberated for many hours before reaching a

verdict. When the jurymen filed solemnly into the courtroom, and the foreman, in the sudden, awed silence that followed their entrance, announced "Not guilty!" the audience burst into applause. What moral significance attached to this manifestation of popular satisfaction with the outcome of the case, the reader can determine for himself.

There was another duel that got into court in New Orleans. It was fought with small swords on October 2, 1846, in the Orleans ballroom, now a convent housing Negro nuns in Orleans street, just back of the old St. Louis cathedral. Dr. Thomas and Monsieur Lebeau were the principals, E. Durel and E. Cazeres the seconds. Dr. Thomas was "badly wounded." All were prosecuted before Judge McHenry of the Criminal Court. Dr. Tricou, who attended the wounded man, refused to testify because "it was contrary to his duty to divulge professional secrets." Laurent J. Sigur, district attorney, conducted the prosecution under the anti-dueling law of 1845. John R. Grymes, a famous lawyer of the time, conducted the defense. The jury was out more than thirty hours, disagreed, and the whole case was dropped.

Sometimes, the participants in these encounters took the arrest in a very good spirit. As witness the following quotation from the New Orleans *Delta* of Febuary 3, 1860:

> A hostile meeting took place yesterday morning at the Half-Way House, between two young Creoles of this city; and it was all about a girl. We have not had the pleasure of knowing the young lady, but have it on the best authority that she is "divinely fair", and as good as she is fair. Were she to know what went on yesterday on her account, her humiliation and sorrow would have been unbearable. Fortunately however, no great damage was done. The weapons were small swords. At the second pass, one of the duellists received a flesh wound in the arm. After the affair the successful duellist treated all the parties to the affair to a breakfast at the Half-Way House, during which much champaigne was put away, as were the duellists later, when they were taken to jail for disturbing the peace and assaulting an officer of the law.

What disposition was made of these two duelists, however, remains a secret. The *Delta* failed to chronicle it.

Not long after the sanguinary Pruett-Trouett duel there was another one, not less terrible and not less characteristic. This

was the Oakey-Wright duel, fought on June 2, 1841, near Mandeville, a small town on the northern shore of Lake Pontchartrain, about thirty miles from New Orleans. Both men were prominent merchants in this city. Nevertheless, at the moment little attention was given to this affair. The newspapers of New Orleans printed nothing about it, beyond the statement that a duel had been fought and that one of the participants had been killed. Subsequently, however, Oakey was arrested and charged with the murder of Wright, and after having been indicted was tried, and it was then only that the facts came out. The Oakey indictment was the first serious attempt made in New Orleans to punish duelists or dueling in Louisiana, unless we admit the prosecution of Trouett to that category.

From the testimony taken in the case, it appears that Samuel Wright was originally from Savannah, Georgia, while Oakey was a native of New Orleans. Both, it was stated, rose from humble walks of life, and both had attained financial and social prominence. Wright came to New Orleans as the agent of Wilde, Pickersgill & Co., a large European mercantile concern. Previously he had been engaged in the lottery business in Savannah, and, failing, it was stated, decided "to get revenge by exposing the schemes and methods of his principals and the merchants of this city, who had recourse to the lottery as a means of advertising themselves and enhancing their fortunes."

Along this general line, then, Wright wrote some articles during the year 1841 for the New Orleans *Times*. They not only caused the death of the paper, but of its principal editor, Mr. Branch, as well, who was killed in a duel to which he was challenged by an indignant reader. Subsequently, Wright wrote for the New Orleans *Democrat*, and soon put an end to that paper, also. Then followed the New Orleans *Intelligencer*, which struggled along for a time with Wright's lucubrations, found them a dangerous feature, and finally ceased publication. It appears that the people of the community were bitterly opposed to the manner in which Wright was conducting himself, and by a system of boycott every paper with which Wright had anything to do, or which espoused his cause, "finally went to the wall." But the belligerent crusader was not discouraged by these lamentable results; they merely prompted him to another and more subtle method of attack.

Suddenly the Vicksburg *Sentinel* began to publish articles attacking what was termed the "list" system of handling cotton. The editor, Dr. Hagan, permitted himself to make very serious and definite charges against the New Orleans merchants who employed that system. Everybody, it appears, admitted that the "list" system could be abused, but no one—at least in New Orleans—was prepared to say that it was necessarily a dishonest way of doing business, or that the individuals who followed it were cheating the planters who traded with them. Oakey probably followed the *Sentinel's* publications with attention, but it may be questioned if, at the moment, he had any idea how deeply and sadly they were destined to affect him.

Oakey was now one of the leading merchants of New Orleans. The financial panic of 1837 had depleted his fortune, but he managed to weather that storm, and with the residue of his capital had built up a business which made him one of the wealthiest men in the city. It was during the troublous days of 1837 that Oakey engineered a deal which though in no way censurable according to the ethics of the time, subsequently supplied the gravamen of charges leading up to the fatal affair which we shall have to chronicle. Oakey associated himself with two friends, Caldwell and Prichard, in a lottery, by means of which they planned to dispose of some of their immediately unproductive property—property of great value, but which had temporarily lost its earning power, through the general collapse of values in that unlucky year. The lottery proved a failure. Only enough tickets were sold to pay the expenses. The promoters faced the prospect of losing all the potentially valuable possessions which they had scheduled as prizes. What was to be done? Abandon the scheme? Go on with the project? They were honest men, and elected for the latter, as the only honorable course. The drawing was held in the presence of a group of well-known citizens. The promoters lost nearly $100,000.

All this was in the past, however, when the *Sentinel* began its attacks on the New Orleans merchants. At length the newspaper began to print verbatim certain sensational conversations supposed to have taken place between New Orleans merchants, even giving the names of the participants. Clearly, the information on which such publicity was based could be supplied only by a person actually in New Orleans. That Wright was the guilty

party soon became a matter of common knowledge. The general resentment was accumulated upon his head, not upon that of the editor of the *Sentinel,* who, it was realized, was distant hundreds of miles from the scene and could have no personal knowledge of the matter. There was much excitement, especially among the members of the Merchants' Exchange, of which, as it happened, Oakey was president.

One evening, when feeling on the subject was at its height, an issue of the *Sentinel* reached New Orleans, containing an article attacking Howell L. Williams, a prominent New Orleans merchant. Williams found Wright in the Merchants' Exchange reading rooms, and an altercation ensued, an account of which was printed in the New Orleans newspapers a few days later. Oakey, as president of the Exchange, felt that it was incumbent upon him to do something to prevent the recurrence of such unpleasant scenes. He found occasion to take Wright aside and expostulate with him in a friendly manner upon the unwisdom of his course in criticizing the New Orleans merchants through the columns of a distant paper, where they could have little opportunity to make known their side of the case. Oakey proceeded on what he considered the admitted fact that Wright was furnishing Hagan with the information on which the *Sentinel's* articles were based, nor did Wright deny the imputation. Wright's defense was, that what he said was true, and that, if anyone felt himself aggrieved, he (Wright) was prepared to give whatever satisfaction might be demanded. On the whole, the conversation was an amicable one.

Not long thereafter, however, in the columns of the *Sentinel,* there appeared a violently denunciatory article charging Oakey with being a thief and a lottery swindler. Whereupon Oakey sent a friend to Wright, reminded him of his declaration some time previous, and at the same time demanded satisfaction for the insult published in the *Sentinel.* Wright, at once and without parley, admitted the charge, and promised to meet Oakey in due time. Matters were arranged very quietly. Each party avoided the appearance of enmity, lest the law might take cognizance of the pending duel. So adroitly did they manage the affair that though the public expected trouble from Oakey's well-known promptitude in resenting an injury, they came to the conclusion that he had determined to let the matter pass, as unworthy of his attention.

Some days elapsed. Oakey had not been informed of the weapons chosen by Wright. It was subsequently ascertained that the latter "was in continuel practice of the rifle." This was said to be Wright's favorite weapon. When living in Savannah, "he had belonged to a club which used to shoot for dinners once a month, and the worst shot never varied an inch from the center of the bull's-eye of the target." The time came when Wright eventually exercised his right to select the weapons, and Oakey was told that he must fight with rifles at forty paces distance. This was one day before the meeting, but Oakey consented at once.

The two men went "over the Lake" on the evening of the first of June, 1841, and on the morning of the second, before the sun rose, the ground was measured off. At the first shot Oakey drew Wright's fire "by his superior quickness." While the guns were loading for the second round, "Wright walked about, but Oakey stood as still and as firm as a post." On the signal being given for the second fire, "Wright fired before the word one and Oakey before the word two." Oakey's bullet struck Wright in the region of the heart, going through the body and one arm, and he died in a few seconds. Oakey was not hurt.

When the news arrived in town the feeling was quite the reverse of that which might perhaps be expected. "Everybody appeared to be satisfied." Even those who had been most severely handled by Wright, admitted that he had "fallen honorably in a duel," and even his friends had no complaint to make.

Commenting on the duel one of the papers said:

> The affair between Oakey and Wright was a personal one. Wright called Oakey a thief, and Oakey met him on the square, like a man. Wright accepted the challenge and fell. What more? The personal quarrel is ended, and Mr. Wright forfeited his fire in making such a charge against a fellow-citizen. Everybody here, friend and enemy to Mr. Oakey, hoots at the idea that he is capable of wrongdoing to any one; and is not the opinion of a community among whom a man has lived all his life, to be regarded as worth something? Besides, Mr. Oakey periled his life in defense of his name, and that proves how dearly he estimates his reputation.

Similarly grave were the results of the meeting between Judge Gilbert Leonard, of Plaquemines Parish, and a man named

Toca, in 1844. Both men were Creoles, but they fought in the American fashion with double-barreled shotguns, and the former was killed. Leonard was one of the handsomest men of his race in Louisiana at that time. He was of commanding height, and had a gracious and popular manner which won for him a multitude of friends. He was very ambitous of political preferment. He had great intelligence. He was regarded as a progressive, and had become a leader of the Democratic party in the State. He was spoken of as the logical candidate of his party for the nomination for the United States Senate in the election which was then approaching.

On account of his political activities in Plaquemines Parish, Judge Leonard had been made the object of particularly vicious criticism by the Whigs, in connection with the so-called "Plaquemines Frauds" during the presidential election of 1844. In that election the vote of Plaquemines Parish had determined the way the State went in the election, and Leonard, correctly or incorrectly—we do not know now—was credited with a large share in the result, and therefore for the election of Polk to the presidency of the United States.

He was not a man to shrink from the responsibility or the danger which it involved. In fact, he had the reputation of being rather too willing to refer any political controversy to the arbitrament of the code, and had already figured in several duels, in one of which, just a few months before, he had killed a well-known Creole named Descommes Vaux. They fought with the usual double-barreled shotguns, and Vaux fell dead at the first fire. Nevertheless, the Whigs were not long in finding a champion willing to risk his life to vindicate their cause against the formidable Democratic leader.

This bold person was Philip Toca. The duel was prepared for by a series of letters published in a local Whig newspaper. Toca attacked Leonard ruthlessly. Leonard replied with equal ruthlessness. The inevitable challenge was speedily issued, and all preliminary arrangements having been completed, the two men appeared on the field. They were armed with shotguns, Leonard's being the same one with which he had killed Vaux. The two men were well matched in courage, but differed curiously in physique, Toca being a mere scrap of a man, while Leonard

was a tall, well-proportioned individual, and consequently a target which even a poor shot could hardly fail to hit.

"Are you ready?" demanded the seconds.

Being answered in the affirmative, they began to count: "One! Two! Three! Fire!"

The two guns rang out in a single report. Leonard was seen to reel and fall. He was shot through the lungs. He died a few minutes later. Toca was untouched. The death of the Democratic leader was greatly deplored, but no one had any criticism to make of his slayer. Toca had, it appeared, proceeded in the whole matter in strict accord with the rules of the game.

The Leonard-Toca duel was one of a number which grew out of the enmities aroused in the political campaign of 1844. In fact, just a year previously—in 1843—one of the most famous political duels ever fought in Louisiana had taken place. This was the duel between Judge Alcée LaBranche and a newspaper man named Huston, or Hueston.

Alcée LaBranche was the first diplomatic agent sent by the United States to the Republic of Texas. He was the son of General Alexandre LaBranche, who distinguished himself at the Battle of New Orleans, and in recognition of his services on that occasion, was made a general in the United States army, his commission as such coming to him just after the battle. LaBranche had two lovely daughters, Mrs. A. M. Haydel, who was Victorine, and Mrs. George Sarpy, who was Pauline. Both were long prominent in New Orleans social life. Alcée LaBranche was one of the most popular men who has ever lived in Louisiana. His admirers were not confined to New Orleans or Louisiana but were numerous in Texas and even in the capital at Washington.

Shortly after his election to the Twenty-eighth Congress, the following curious notice under the heading of "New Members of the House" appeared in one of the Washington papers relative to him:

> Mr. La Branche is a new member from Louisiana. He is young, handsome, rich, and accomplished, a great admirer of the ladies, and to crown all, a bachelor. What a prize!
>
> Mr. La Branche is about twenty-five years of age, with a tall, stout, commanding appearance, wanting little of six feet in height, with a form of the finest symmetry in nature.

> His face is oval, with regular and gentlemanly features, of the most uniform proportion, of a deep roseate hue, while his mild cheek is adorned by the most fascinating dimples. His eye is a deep hazel, large, and sparkling, with a high bland forehead and countenance of surprising expression, denoting great generosity and warmth of heart. But his greatest personal beauty is his rich, raven heair. It is impossible to conceive anything so black, redundant and glossy. His manners are cordial and uncommonly affable. Mr. Le Branche prides himself on being a Creole, that is, a native-born citizen of Louisiana, where his father was also born.

Alcée LaBranche fought two duels, in neither of which he was the aggressor. One of them was with Hueston. One was not exactly a duel, but rather an impromptu shooting match in the State Capitol, during the time that LaBranche was serving as Speaker of the House of Representatives. The facts connected with this latter affair, as related by the newspapers and other publications of that day, were as follows:

One morning during the session of the Louisiana Legislature in 1837, John Randolph Grymes, one of Louisiana's most distinguished lawyers, and a distinguished member of the Legislature, who harbored some grievance of a purely political nature against LaBranche, walked down the main aisle of the House in the direction of the Speaker's stand, and as the latter was about to call that body to order, deliberately fired a pistol at him. The ball grazed LaBranche's head. Grymes' fire was quickly returned by the Speaker, but the shot missed its mark. It looked as though there might be later a repetition of the affair in the street, but in the meantime friends of both parties interfered and the trouble was at an end. In the annals of dueling in New Orleans this is always referred to as Mr. LaBranche's first duel, though strictly speaking, it was not a duel at all. Grymes was later arraigned before the House, of which he was a member, for violating its privileges. There his attitude was distinctly apologetic.

"It was believed," said Major John Augustin, one of Louisiana's most gifted writers, and at one time managing editor of *The States*, in an article upon the affair, "that Colonel Grymes sought a difficulty with the Honorable Alcée La Branche in order to attract attention and secure a liberal patronage from the party for which he was laboring at that time with such vigor and earnestness."

In the contest for Congress in 1843, it appears, the Democrats had as their candidate in the Fourth District, General Bossier, who a few years before had killed a distinguished Whig leader, General Gaiennié, in a duel with rifles. In the Second District, the Democratic candidate was Alcée LaBranche. Hueston, who was the editor of the Baton Rouge *Gazette*, reviewing the political situation, took occasion bitterly to assail both General Bossier and Alcée LaBranche.

"It would," says Major Augustin, "be difficult to imagine a more irritating and insulting, as well as unjustifiable and gratuitous invective than his."

LaBranche, whose attention was called to the article, was about to leave by steamer for Baton Rouge, to demand satisfaction of the editor, when, just before the boat backed out from the levee, he learned that Hueston was not in Baton Rouge, but in New Orleans. Accompanied by two Creole friends, LaBranche proceeded to the St. James Hotel, a building which still stands fronting the Board of Trade on Magazine Street. Here Hueston was staying. Being told he was in the billiard saloon, the visitors sought him there.

Hueston was engaged in a game of billiards at the time. LaBranche approached him and inquired if he were the editor of the Baton Rouge *Gazette*.

"Yes, sir," replied Hueston.

"Then, sir," was the rejoinder, "I am Alcée La Branche, whom you have so grossly slandered."

Upon which LaBranche raised his cane and struck Hueston several blows on the head. Hueston was stunned and fell to the floor. Bystanders interfered. Hueston was not very seriously injured. Several days later, when he had recovered from his wounds, Hueston sent for his friends. They carried a cartel to LaBranche, who accepted the challenge. LaBranche, being the recipient of the challenge, and having the right to name the weapons, chose "double-barrelled shot guns, to be loaded with balls, the distance forty paces."

Major Augustin relates the details of the affair as follows:

> Huston, recklessly impatient for the combat, accepted the terms, and before he had recovered from the effects of the blows he had received from La Branche, rode out with

his friend to Gentilly Ridge, where more than the usual number of friends of both parties were assembled. The guns were loaded and the parties placed in position.

At the first fire both missed. It was evident, however, that La Branche handled his piece with more quickness and steadiness.

There was no parley between the fires. Neither principals nor seconds manifested or felt the slightest desire for reconciliation or settlement. It was a duel to the death. Huston, the Northern born and Northern educated man, was as determined as the fiery Creole.

Several times did they fire without effect. Their impatience to destroy one another rendered the aim uncertain.

At last, at the sixth fire, La Branche's ball passed through Huston's hat, producing a slight abrasion of the skin and causing the blood to trickle down his cheek.

"Another pop," cried Huston, fearful that his seconds might here interrupt the combat.

They took their stand again for the last time. It was quite noticeable that La Branche had got the range, and a general presentment was felt that he would make a finish of the affair at the next fire. The word was given. Huston fired first, La Branche more slowly and deliberately, and, alas!, fatally. Huston staggered and fell. In a second, he was in the arms of that eminent surgeon, Dr. Warren Stone, who detected at a glance the locality and character of the wound, and placing his hand upon the naked breast from which he tore the shirt, arrested the gushing torrent of the life-ebbing current. He saw that the wound was mortal. Huston was already insensible and gasping. The ball had passed through both longs. He was borne to a carriage in which he was supported on the knees of Dr. Stone and one of his friends. Long before the carriage reached the city, Huston had breathed his last, without a word escaping his lips.

The body was sent to Baton Rouge and laid to rest by a heartbroken widow.

In 1851 a violent feud arose in the Whig party in New Orleans in the Second Congressional District, between the supporters of two rival Whig candidates for Congress. These were Judge T. G. Hunt and I. N. Marks, the person who had the honor of originating the Unification movement. In the feud, the leading Whig paper in the city—the *Crescent*—espoused very warmly Mark's cause, and its editor became involved in a fierce controversy with the Hunt family, who were prominent members of

the Whig party. The editor's name was Frost. He was a native of New England, a lawyer by profession, and a writer of some ability. Frost had lived some years in the northwestern part of the State, and was invited to the city especially to take charge of the *Crescent*. He was not a quarrelsome or violent man, though fond of argument and a pertinacious partisan. It was believed at one time that Frost disapproved of the dueling code. It was said he had once given offense to his political party in the country by refusing to respond to a challenge. As soon, however, as he took charge of the *Crescent*, he changed his views on that subject; and it was now feared by his more thoughtful friends that he was, if anything, a little too eager to demonstrate his valor on the field of honor.

Frost became involved in several controversies which threatened to bring him out on the field, but from which he emerged without having had to risk his person. Then the political feud referred to above brought him into collision with the Hunt family. Dr. Thomas Hunt, the oldest but one of the talented brothers of that distinguished family, was a gentleman of great intellectual ability and of the highest reputation as a scholar and patriot. He resented the denunciation of his family made in a public speech by Frost, and retorted with a charge of falsehood. A challenge immediately followed, and the parties on the next day proceeded to the battlefield below the city. The fatal double-barreled smoothbore shotgun was chosen as the weapon. At the first fire Frost fell mortally wounded, and after much suffering, died on the field. Frost was a widower, and a man of many good qualities, and had many warm friends. The conduct of Dr. Hunt on the occasion was marked by the finest chivalry as understood at that time. He made every effort to adjust the quarrel without a resort to arms, and after the first exchange of shots, his friends, by his instructions, desired a parley and accommodation. But these overtures were rejected by Frost and his seconds; another exchange of shots was demanded, and poor Frost was the victim of his own and his friends' ill-advised persistence.

A duel occurred in 1854 between John Debuys and Walter Castein, two high-spirited young Creoles, the cause of which is not now remembered. Again the weapons were double-barreled smoothbores, at the usual distance. At the first fire Castein was mortally wounded.

About the same time, another duel of the same kind occurred between Packinham Le Blanc and George W. White. They were both Creoles of ancient and prominent families in New Orleans. White was the nephew of the then Mayor of the city, Denis Prieur. He was involved in this affair in a purely accidental manner. Le Blanc had taken mortal offense at some indignity he imagined had been put on him by the managers of a public ball. He determined to hold at least one of the managers to account, and accordingly placed their names in a hat and drew out one. White's name was that so drawn. Le Blanc immediately went in search of the intended victim and, meeting him in the street, grossly insulted him, and, being challenged, chose double-barreled shotguns, which he had used effectively in previous difficulties. Le Blanc was regarded as a very dangerous antagonist with any weapon, and White, who had been dragged so innocently into this difficulty, had never been engaged in any such affair. He was, too, an amiable and popular young man. When the parties met, White, acting upon the advice given to him by his uncle, who had much experience in these affairs, fired quickly at the word. His adversary fell mortally wounded before he could pull the trigger of his gun, which exploded in the air as it dropped from his dying hand.

In 1859 another famous duel took place, in which the participants were two young Creoles, named, respectively, Laresche and Bossiere. They met with double-barreled shotguns, at a distance of forty paces. At the first fire Laresche fell mortally wounded.

Another fatal encounter was that between Morgan and Sparks, two gifted young men, sons of old and distinguished Southern families. They had just been graduated in medicine at the University of Louisiana, as it was then called—now Tulane University. They quarreled at an entertainment given by the students, and early the following morning repaired to the Louisiana Race Course to settle their difficulty according to the code. The weapons were the inevitable double-barreled shotguns. At the first fire young Morgan was wounded. He lingered a few days, but finally died of his injury. He was a son of a well-known New Orleans attorney, Thomas Gibbs Morgan, and brother of Judge Philip Hickey Morgan.

Here are some notes regarding other sanguinary encounters, as reported in the contemporary newspapers. The first is from the *Crescent* of March 30, 1858, and reads as follows:

> A hostile meeting took place on March 22, in the Parish of St. John the Baptist, between Mr. J. Williams and Mr. A. Burch which resulted fatally to the latter. The difficutly originated in the settlement of an account. The weapons were double barrel shot guns, distance forty paces. At the first fire the bullet of Williams took effect on his opponent, shattering his arm and passing through the body, killed him instantly. Burch was a hard working man, industrious, a good citizen and a man of peace. We are informed he left a large family who was dependent upon him for support. We understand, also, that his family is utterly helpless.
>
> On the Tuesday following another duel with rapiers took place between Mr. Ernest Legendre, editor of the Meschacebe and Mr. Gustave Furrate. The former received a slight wound in the breast, while the latter was only scratched on his hand.

The second notice is from the *Delta* of the same year (1858). It seems that a young man residing in Richmond, Virginia, amused his too abundant leisure by writing some articles about New Orleans, and sent them to the *Crescent*, which found space for them in its columns. They were supposed to be funny, but the humor was largely at the expense of the people and customs of the Crescent City, and, somehow, the local public did not see the point. When half a dozen of these compositions had been printed, the editors of the newspapers were made to understand that more of them would be unwelcome. They communicated this fact to the Virginia litterateur. They also informed Mr. Bagby—for that was the author's name—that his identity would have to be disclosed to a gentleman who claimed to be personally aggrieved through their publication.

The editor of the *Crescent* and its entire editorial staff, it appears, had a few days previously each been the recipient of a challenge from C. F. Irving, a person connected with one of the newspapers in Richmond. His grievance was a "covert insult" conveyed in one of the articles in the *Crescent*. Commenting on the *Crescent's* trouble, in the issue of November 30, 1858, the *Delta* said:

> Of course, our confrere, Mr. Bagby, intended in his articles to describe a class, an impersonality, and had not the slightest intention of reflecting upon any particular in-

dividual. Mr. Irving, however, who is a maniac on the subject of duels, and his honor, does not so regard them. He viewed these articles in the Crescent, which subsequently appeared in Harper's magazine, as a covert assault upon himself, personally and particularly, and has forthwith challenged the editor-in-chief and his entire staff, to be sure to reach the author of the publications complained of. He did not know, however, that Bagby had anything to do with them, and Bagby was not honored with an invitation to the field of honor, just then. The language was the same in each challenge and of the most violent character, thief, liar, scoundrel, etc., being words of Chesterfieldian politeness compared to the vocabulary made use of by Mr. Irving.

"I make my language strong and comprehensive," says Mr. Irving, "so that there will be no excuse for the writer of the libel upon me to fail to meet me where gentlemen having a grievance against the other are wont to meet."

Today the editorial staff of the Crescent is completely demoralized over the situation. It is a rule of the Crescent, as it is with other newspaper publications in New Orleans, to print nothing of a personal character without exacting the name of the writer, to be used in case the accuracy of the publication is in any way questioned.

Although the article to which Mr. Irving has taken exceptions appeared in the Crescent as an editorial, it had, as a matter of fact, been written by Mr. Bagby as a communication, and in the circumstances responsibility for it now rests with the editor of the Crescent.

The editor of the Crescent and Mr. Irving both worked on the same paper in Virginia two years ago, and the former is the last person in the world who would write anything reflecting upon his friend. In Richmond, as well as in New Orleans, where Mr. Irving worked for a time, he was regarded as very eccentric and especially touchy in the matter of his "honor." In fact, it was impossible to work with Mr. Irving with any degree of pleasure, for he was always challenging somebody.

Mr. Irving has it in his head that death on the field of honor is the most glorious thing that can happen to a mortal, and he has been doing everything possible to accomplish such an end in his own case. Suffice it to say that the editor of the Crescent is not of Mr. Irving's opinion, but, on the contrary, has always been opposed to duelling, except where there was no other resort open to two people to settle their differences. Happily, a way has been found out of the present trouble, for Mr. Irving's representative here says that the matter has been amicably settled.

> The editor of the Crescent, it was stated in the Courier, protested that Irving's name not being used in the articles referred to, had no right to take exceptions to statements which in no way connected him with the conditions described in Mr. Bagby's communications. Irving stood pat, however, on his right to challenge, whether he could get a second or not to represent him; and to settle a very unpleasant controversy the editor of the Delta [?] expressed his sincere regret that anything in the communications of Mr. Bagby should be construed as a reflection upon him (Irving), whom he had always admired and esteemed as a gentleman. Bagby, it appears, refused any satisfaction whatever, and having met Irving in the field, there was an exchange of shots, after which the seconds interfered and put an end to the difficulty. Many similar rencountres, besides innumerable involvements of seconds, subsequently served to enliven the monotony of Mr. Irving's career.

Although the denouement of this singular incident was located some hundreds of miles away from New Orleans, it deserves a place in the chronicles of the duel in the latter city, not only because it illustrates some of the perils of journalism in that time and place, but because it is probably the only case in the history of the field of honor where the entire staff of a daily journal was challenged.

It must not be imagined that the duels described in the foregoing pages exhaust the subject. They are but a few selected from a long and bloody catalogue, easily compiled from the pages of old newspapers, letters, magazine articles, and the tradition which, in New Orleans, is a never failing source of curious historical material. Dueling flourished in New Orleans down to the Civil War. The agonies of that conflict were sufficient to satisfy the most demanding appetite. Amid the almost universal bereavements that attended the war, the idea that "blood wipes out dishonor" somehow seemed to fall into desuetude. But the practice was not altogether extinguished even then. Probably the last duel fought in New Orleans took place in 1888. It was between André Roman, editor of the *Trait d'Union,* a local French newspaper, and Emile Rivore, business manager of the same publication. There was a quarrel at a meeting of the newspaper's staff. It arose in the course of a discussion of the Nicholls-McEnery gubernatorial campaign, which was then in progress. Inkstands were thrown, and after the challenge had been duly presented

and accepted, the principals and their seconds set out for the place of combat, which in this case was on the banks of the Mississippi River, opposite New Orleans, in Jefferson Parish. Five shots were fired on either side, and then, as neither of the duelists was touched, a reconciliation was effected and the affair terminated.

II.

From the routine manner in which the New Orleans newspapers in the early part of the nineteenth century dealt with duels and duelists, one might easily get the impression that the killing or wounding of men in these affairs was regarded as a trivial feature of the performance. That was not exactly the case. There exists a singular document which shows that in at least one instance, the victor got very little satisfaction out of his adversary's death. That is the long statement prepared by the survivor of a duel, in which he tries to exonerate himself in his own eyes for the death of his adversary. According to tradition, he was consumed with remorse for having inflicted a fatal wound upon a quondam friend, and died not many months after, of what was really a broken heart. Probably such instances were rare. We have Shakespeare's authority for saying that men do not often die of a broken heart. But that cases of bitter regret for fatalities resulting from the barbarous practice of individual combat were fairly frequent, there can be no doubt.

The participants in the duel which had such lamentable consequences were John Ward Gurley and Philip Livingston Jones. They were both of unimpeachable social standing. Gurley was a member of Governor Claiborne's council and attorney-general for the Territory of Orleans. He was one of Claiborne's seconds in his duel with Clark. Aside from his notable intellectual ability, Gurley was regarded as a man of sterling integrity. As the governor's confidential friend and adviser, he exercised much influence over the administration of territorial affairs.

Jones was a cousin of Edward Livingston, the jurist, and a grandson of Philip Livingston, one of the signers of the Declaration of Independence. He came to New Orleans with his cousin, and speedily rose to an important position at the bar of Louisiana. He was a native of the state of New York, but seems to have adopted without hesitation the peculiar ideas of honor which prevailed in the community to which he had removed. At

the time of the duel he was twenty-seven years of age. He had been recently married to Mary Louisa Brown, the youthful widow of Hore Browse Trist, first American collector of the port of New Orleans, the second incumbent of that then important and distinguished office.

The cause which brought these two men face to face on the field of honor was a trivial one. They had long been friends. They fell out over a political matter—whether Gurley had first mentioned Jones' name to William Brown in connection with the post of sheriff of Orleans Parish, or whether Brown had first mentioned it to Gurley. It became a question of veracity, and therefore these two young men met "under the oaks", pistol in hand, and shot each other—Gurley receiving a bullet in his heart, and Jones a bad wound in the leg.

Gurley's home on Bayou St. John was only a short distance away from the scene of the fatal encounter, and thither his bleeding form was borne on a stretcher, to the consternation of his wife and of a group of friends whom he had been entertaining, and whom he had left to participate in the duel. A singular circumstance in this connection has been preserved in the traditions of the Gurley family. This is, that, in honor of his guests, young Gurley had donned the formal dress habitually worn by gentlemen on such occasions—black from the head to foot. The color was ominous. Gurley was the life of the party. Then, consulting his watch, and perceiving that the hour appointed for the duel had arrived, he invented a pretext to excuse himself from his friends, hastened to the field, and within the hour was brought back home—dead.

Jones' wound was serious. He was hurried to a carriage and driven into the city. Skilful physicians succeeded in preserving his life. They might medicine his body, but they could not cure the mind. Jones was overwhelmed with grief over the death of his erstwhile associate. It was under these circumstances that he composed a long account of the duel. This is the document to which reference is made above. It still exists. Somehow or other, in the course of years, it found its way to Virginia, where it remained for a century, forgotten in the archives of the Trist family; until, somewhere about the years 1910 or 1911, at the instance of the distinguished New Orleans artist and writer, Trist

Wood, himself a relative of the unhappy duelist, it was resurrected and published. We reproduce it here from the columns of the New Orleans newspaper in which it appeared.

Probably there is no other such document in the world—at least, no other story of a duel written by a participant precisely under the same melancholy circumstances. It makes us see just how an affair of honor was conducted in 1807. It is valuable for that reason. But it has a deeper and more disturbing value for the light which it sheds upon the psychology of the men who, long ago, conformed to a barbarous custom, and could bring themselves in all conscience to take part in what was, after all, a terrible crime.

Jones, in defending himself, blames Gurley for what happened. His, however, is an ex parte statement. We need not attach too much importance to this feature of his statement. As we read his pages, we see him as he was—a man of exquisitively sensitive pride, strangely narrow in his view of a situation which, otherwise, might have admitted of solution, obstinately resolved to obtain redress for what he regarded as an affront to his dignity. We are perhaps less admirable in many ways nowadays, compared to the people of the early nineteenth century, but at least we have better sense in cases of that sort; or—what perhaps amounts to saying the same thing—politicians and public officials in the twentieth century have a different point of view from that entertained by their class in the early years of the last century.

This is Jones' story, as published by Mr. Wood:

> About the middle of April last the office of Sheriff for the City of New Orleans became vacant as a result of the removal of Mr. Garland. Several days elapsed before a successor was appointed, and a host of applicants were kept in fearful suspension. Pending this interval the attorney general, Mr. Gurley, applied to my brother-in-law to know whether I would accept the appointment. He answered he believed it would not be disagreeable, and added that if he (Mr. G.) thought my prospect of success a fair one, to tell the Governor that he would not only be one of my sureties but also mortgage all his property to insure the well performance of my different duties. . . . Early the next morning I received the same intimation from Mr. G. himself. I thanked him with sincerity and warmth for his friendly interference and requested him to tell me candidly whether he supposed he could procure me the appointment. He answered with

much apparent ingenuousness: "He thought that there was only one difficulty on the subject— the strong prepossession the Governor had imbibed against American candidates for office, and gave several names as instances of his having made unfortunate selections." He then said with more than usual energy that "an American ought and should have the office, that no person stood in competition with me but the Creole applicants and that it should be his endeavor to drive this singular prejudice out of the Governor's head. . . .

Here ended our first interview, he pledging himself immediately to see the Governor and I should know the result at dinner. . . .

When our dinner hour arrived, Mr. G. sent an apology that he could not see me until the afternoon.

He then informed me that he had made three visits at Government house, but that company or absence had prevented his seeing the Governor, but assured me he would make it a point to see him that evening. . . .

The next morning I met him at court and he again informed me that he had been unfortunate in not yet finding the Governor, but that he would dine with me and that I should then positively have a decided answer. Before dinner I again saw him. He then told me "the prejudices of the Governor still remained strong against appointing an American, but that he had listened to my name with much attention, that he would see him again before dinner, but conjured me most earnestly to enforce what he had done with whatever other interest I possessed. In consequence of this I requested Mrs. T. to visit the Governor on the subject. (The writer does not identify "Mrs. T.")

Again we parted, and I did not see him until the next morning, when he again urged me to exert all my interest, that the Governor was wavering, but that day was to decide the business.

Mrs. T. visited the Governor. He assured her the office was already promised to Mr. Cenas and while conversing on the subject they were interrupted by company, and the Governor, as she was leaving the room, pledged himself that "though a promise had been made, the commission had not yet issued." This want of decision in the Governor and the hopes held out by G. together with the persuasions of my friends induced me to persist, though I felt assured there was something "rotten in the state" of affairs. . . .

The next morning I met Judge Hall [of the U. S. District Court], who accompanied me home. After having been there some time he observed "there was a very lucrative office vacant," and expressed his surprise as I was on good terms with Governor Claiborne, that I did not apply for it—

that he thought I might procure it, and concluded with a proffer of his services. I thanked him and told him what has preceded these lines. He appeared much surprised and observed that he feared I had been deceived, for that he knew "from good authority" that Mr. Gurley was exerting all his influence for another candidate. I could not do Mr. G. so much injustice as to suppose the judge's information correct, and vindicated his character from the supposition of a conduct so base. The judge then said he would wait on His Excellency and ascertain the fact, and if the office was not already bestowed he would exert his influence in my favor.

I now began to doubt the sincerity of Mr. G.'s conduct, though I could not reconcile to my feelings a belief in such dishonesty. A short time after the judge left me Mr. G. was announced. I was in my chamber with my wife and Barton Prevost. He was introduced and after some casual conversation, G. asked me to step into my office on business. After some hesitation he told me that Mr. Cenas had received the appointment. I regretted in general terms that I had allowed my name to be used and that I certainly would not have done it had it not been for his application to the collector and from my own knowledge of his intimacy and influence with the Governor. He said he had endeavored to promote my views with all his interest, which was comparatively trifling, and deplored the obstinacy of the Governor in a most piteous style.

I answered if his influence with the Governor was trifling, the world was ill-natured enough to magnify it considerably, for they made no hesitation in stating that he had exerted influence for more than one, and that Mr. Cenas was supposed to be obliged to HIM for his success. The countenance of Gurley was instantly changed. . . . Recovering, however, and pressing his hand with energy to his heart, appealed to the "ever living God" as to the purity and correctness of his conduct throughout the whole transaction. . . . Lamented he had taught me a hope and regretted "that my brother-in-law had ever mentioned my name or spoken to him on the subject." "Stop, Mr. G.", I said, "you applied to my brother-in-law. You first mentioned my name as a person qualified for the office. You offered to use your influence with the Governor."

"My Dear Sir," (said G.), "there must be some mistake. Mr. Brown, I am confident, first mentioned your name to me; at least I think so. I am not perfectly certain. . . .

He was much agitated, nor was I much less so. My wife being in the adjoining apartment and his being in my own house contributed to render me more temperate and guarded than I otherwise could have been. I wished to conclude the

conversation and told him it was unnecessary to say anything more on the subject, and rising offered him a glass of wine, which he accepted . . . . to my great relief he took leave. . . . I learned from Mr. B.—— in the course of the evening that Gurley was about making a purchase and wanted pecuniary assistance, and the day Cenas received his appointment or the promise Gurley procured from an usurer, $3,500, for which the new sheriff became security. . . .

The next morning (I think it was Sunday) I walked to the coffee house where I received the congratulations of some and the sarcastic sympathy of others on my hopes and disappointments. . . . Meeting two gentlemen (Mr. McShane and Mr. Duplessis) after some remarks on the subject they requested me to tell them the manner in which Gurley had behaved. I told them what I have now written. Mr. Duplessis observed my relation differed from Mr. Gurley's very materially, who had given it to him IN CONFIDENCE, but that he now deemed it proper to state that Mr. G. solemnly asserted THAT MY NAME HAD NEVER OCCURRED TO HIM UNTIL THE COLLECTOR SOLICITED HIS INFLUENCE IN MY BEHALF. Mortified at his having used my name and irritated at this (to me) confirmation of his perfidy I pledged myself that if Mr. Gurley had given such information he was guilty of a falsehood and added I was confident he would not dare to make such an assertion in my presence. . . .

I then sent a note to Governor Claiborne to request an audience, which being instantly granted, I repaired to his house and told him the object of my visit was to ascertain who had first mentioned my name to him as a candidate for the shrievalty. He answered with every appearance of candor, Mrs. T.— Doubt could not longer exist in my mind as to the part Gurley had been acting. I censured his conduct with much warmth. The Governor requested me to inform him how and in what manner he had behaved that could authorize me to censure him with so much bitterness. I told him my story. . . .

The Governor listened with much seeming interest, and after a moment's pause said he had been endeavoring to recollect who mentioned my name first and that he was sure it was Mr. Gurley. I pressed him upon that point, but could get no further satisfaction.

I then took my leave, requesting him when next he enumerated the names of the different candidates that mine might be mentioned with respect and that the circumstance of the office having been offered me by the most influential member of HIS PRIVY COUNCIL might not be forgotten. . .

Here Jones narrates the events of the next day with great circumstantiality. Gurley meeting him in the morning, commented sharply upon Jones' conversation with Duplessis. He demanded to see Duplessis and McShane in Jones' presence; and 4 P.M. was appointed for the meeting. Then he says:

> Returning homeward and reflecting on his conduct I determined to have the affair arranged immediately, and in place of going home I walked by the coffee house where I met McShane and Duplessis, and after remaining there a short time I saw Mr. Gurley at a distance walking arm in arm with the Spanish Consul [Vidal], apparently in earnest conversation. . . .

Jones states that Gurley then promised him to meet the gentlemen in ten minutes, but when approached again at the expiration of this time, "hastily pulling his watch from his fob, he recollected he had a note at the Bank to take up." However, Gurley let the note wait, and he, Jones, and Messrs. McShane and Duplessis repaired to Duplessis' home. Duplessis, called on for a statement, said that Gurley had informed him that the collector had first mentioned Jones' name. Gurley said that if he had made such a statement, it must be correct, and asked that the collector be called in. Jones went out for the collector, whom he found "on the opposite side (of the Exchange)," and, presenting him to the company, asked him also to make a statement regarding the matter under discussion. The collector "observing a minuteness so particular that doubt could not exist as to its correctness" and with "a firmness so manly" that the truth was "abundantly revealed," stated that Gurley had first mentioned Jones' name to him. Gurley thereupon acknowledged that, since Mr. Brown was so positive, he would accept his statement as the correct version. This did not end the matter with Jones, as his account of what immediately followed, shows. He says:

> After this I rose and thanked the gentlemen for their polite attention, expressed my detestation of Mr. G.'s conduct and TOLD HIM NEVER AGAIN to dare to make use of my name to answer his own mercenary views. I then concluded by declaring that wherever I heard HIS STORY had been listened to, I should take the utmost pains to publish his infamy and falsity, and apologizing to Mr. Duplessis for the unpleasant scene, took my leave.
>
> The next morning about 11 o'clock, Mr. Gurley's brother presented me with Note 1. [This note, which was on a loose sheet of paper, is lost. It was a protest, in general terms,

against Jones' conduct.] I instantly answered it, No. 2. [This note also is missing; it was a defiant answer by Jones, also couched in general terms], and supposing it might lead to a serious affair, I spoke in confidence to Arthur Morgan and requested him to dine with me. During dinner I received note No. 3. [This, too, has been lost; it was obviously a complaint of offensive observations made by Mr. Jones before certain persons], and having made a previous arrangement with Morgan, sent for him from the dining room to my office and requested him to take a verbal message "that I offered to meet Mr. G. in presence of any persons before whom I had made any offensive observations, and to avow or disavow them," and to add that if he would name the persons I would answer him most candidly. Morgan returned with the names of McShane and Duplessis, and a demand for an immediate answer in writing.

No. 4 was the answer. [This is the only one of the four notes preserved. It reads: "Sir— Take this as the only answer I can with propriety make. You have named the persons before whom I made the offensive observations, and I acknowledge and repeat them. Yours, Philip Livingston Jones."] An invitation from Mr. G. followed and was accepted with the objection: that we must meet before dinner. G. wished to see me in the afternoon. I told Morgan he might fix it for any hour from daylight to 2 o'clock. With some difficulty the arrangement was made.

At the hour agreed upon I was upon the ground with my friend and surgeon. He detained me three-quarters of an hour, amusing himself with ridiculous messages "that if I would acknowledge I had been hasty or intemperate in my expressions that he would be satisfied, etc." My answer was uniformly the same: that I was there at his invitation; that he well knew how basely he had treated me, and finally, THAT I NEVER WOULD RETRACT ONE SYLLABLE OF WHAT I HAD EXPRESSED.

He then amused himself by changing his morning dress to black silk. [Footnote in Jones' hand: "The meeting was back of his house, about two miles from town"]. Morgan informed me of this, and declared he should take them off, and asked my opinion. I said it was perfectly indifferent to me. He might appear in what attire he thought proper, but to tell him I should only remain ten minutes longer on the ground.

Morgan returned and told me where I was to stand, and wished me to feel the weight of my pistol, which I declined, but requested him, as I was a novice in affairs of this kind, to repeat his instructions. This done, I bade him farewell and gave him a Paquet for my mother and my wife. . . . A few minutes after Mr. G. appeared with HIS surgeon and

friend. We saluted. We were stationed. The word was given to make ready and fire when we pleased. I [Footnote in Jones' hand: "according to M.'s particular directions"] received the fire of Mr. G. (before I touched my trigger) and was wounded in the right leg. The effect of my fire is too well known.

Comments from me on this subject would not, perhaps, be thought correct. Satisfied with the propriety of my own conduct, it would be ungenerous to express a harsh opinion on that of my antagonist, and I only hope that his character and conduct on the occasion may remain without defense.

His memory will not be injured by being forgotten.

The respect and attention paid to me during a confinement of six weeks evidence a conviction on the mind of the public of the propriety of my behavior.

As to their censure, I have nothing to fear. As to myself, I never can obliterate from my recollection the awful catastrophe and, tho' self-acquitted, many moments of my life will be embittered by this much-deplored event.

I cannot conclude without mentioning one circumstance which speaks a language that scepticism cannot doubt or prejudice distort. I mean the conduct of Governor Claiborne, the intimate friend and patron of my unfortunate antagonist.

On the morning after his interment the Governor requested one of the judges of the superior court [Judge Lewis] TO CALL ON ME IN HIS NAME and to assure me that "though I had unfortunately deprived him of his most intimate friend and ablest adviser, yet he attached TO ME no kind of censure and blame and that he still retained for me a great respect and regard."

This coming from Claiborne through so respectable a channel renders vindication unnecessary.

And this is the way a duel looked to one of its participants, in the year of Our Lord 1807.

Mr. Wood, in publishing this sorrowful document, added some interesting explanatory notes, which can be briefly reproduced here, to elucidate some of the personal references in Jones' narrative. The Brown whose name figures in it was, it appears, the William Brown who was the second collector of the port of New Orleans. He was the brother-in-law of the successful duelist. Brown was born in Ireland in 1784, succeeded his brother-in-law, Hore Browse Trist, as collector in 1805, and held the office for four years. It was during his incumbency that the duel was fought. It is he to whom Jones refers as "the collector." It is interesting to note that William Brown was twenty-one years

old when appointed to this very important office; his predecessor, Trist, was twenty-eight when he received his commission. It is remarkable that men so young should have been entrusted with so responsible a position, but that they acquitted themselves satisfactorily seems amply borne out by the official records of the time.

Jones left his young widow with her two sons by her previous marriage. The boys were Nicolas Philips and Hore Browse Trist. They were sent to Virginia and brought up at Monticello, under the eye of no less a personage than Thomas Jefferson. The elder, Nicholas Philip Trist, married Virginia Randolph, Jefferson's granddaughter; and it was in this branch of the family that Jones' remarkable composition was preserved until Mr. Wood, as has been said, discovered and published it.

RECORDS OF THE SUPERIOR COUNCIL OF LOUISIANA
LXXXVIII.

January-March, 1763

(Continued from April, 1941, Quarterly)

By G. Lugano

Revised by Walter Prichard

By the Editor of the Quarterly

List of Officials of Louisiana participating in the work of the Superior Council of Louisiana contained in this installment:

De Kerlérec, Louis Billouart, Chevalier, Governor

De Foucault, Nicolas Denis, acting Commissioner General of the Marine, acting Intendant and First Judge of the Superior Council

De la Lande d'Apremont, Charles Marie, Councillor Assessor, and acting Procureur General

Delaunay, Louis Alexandre Piot, Councillor Assessor

De la Chaise, Jacques, Councillor Assessor

Lesassier, Charles, Councillor Assessor

De Kernion, Jean Francois Huchet, Councillor Assessor

Chantalou, Augustin, Councillor Assessor

De la Houssaye, Paul Augustin Le Pelletier, Town Major of New Orleans

Fremeur, Councillor

Lenormand, Marin, Sheriff

Broutin, Francois, Royal Notary and Chief Clerk of the Superior Council

Ducros, Joseph, Attorney for Vacant Estates

Garic, Jean Baptiste, Royal Notary and Chief Clerk of the Superior Council (1765)

Chanfret, Claude Trenaunay, Judge and Subdelegate at Pointe Coupée

Benoist, Charles, Royal Notary and Clerk of the Court at Pointe Coupée

Guichanduc, Bertrand, Surgeon of the King at Pointe Coupée

Barnabé, Rev. Father, Capuchin Priest, Apostolic Missionary and Pastor of the Church of St. Francois of Pointe Coupée

Pain, Storekeeper for the King at Natchitoches

Fazendé, Judge at Mobile

Carette, Rev. Father Francois, Jesuit Almoner, Chaplain of the Ursuline Convent

Duvergés; De Reggio; Ducros: Clerks or secretaries of the Superior Council

January 4, 1763.

No. 8314. 7 pp.

Obligation by Jean Duvivier to Antoine Lalande, for 7000 livres, to be paid within three years from the proclamation of peace.

This Day, January 4, 1763, in the afternoon, before the Royal Notary of the Province of Louisiana, residing in New Orleans, in the presence of the witnesses hereinafter mentioned and undersigned, personally appeared Sieur Jean Duvivier, a resident of this city, who admitted owing to his partner, Sieur Antoine Lalande, also a resident of this city, the sum of 7000 livres, previously loaned to him by Sr. Lalande, and which Sr. Duvivier promised and obligated himself to repay, without interest, within three years from the day of the proclamation of peace, in specie current at that time as legal tender in this city, it being understood that he shall have no right to compel Sr. Lalande to receive said sum before said time; and as security he granted a mortgage on all his property, movable and immovable, present and future, wherever situated, adopting, for the purpose of this act, his legal domicile in his residence in this city, where he consented that all acts necessary for the execution of these presents be passed. Thus done in the Notarial Office of this city, in the presence of Sieurs Marin Pierre Bary and Antoine Foucher, duly qualified witnesses.

(Signed): Duvivier; Bary; Foucher; Broutin, Notary.

Antoine Lalande declared that he could neither write nor sign.

Lalande's discharge to Duvivier for 2000 livres of the above obligation.

February 3, 1763.—This Day, February 3, 1763, in the morning, before the Royal Notary of this city, appeared Sieur Antoine Lalande, mentioned in the above act of mortgage, who, by these presents, acknowledged having received in cash from Sieur Duvivier, mentioned also in the said act, the sum of 2000 livres, on account of the indebtedness of 7000 livres, specified in said mortgage, and he discharged Sr. Duvivier of said sum of 2000 livres, promising to have him acquitted also towards and against whomsoever else it may concern.

Passed in the Notarial Office of this city, in the presence of Sieurs Marin Bary and Antoine Foucher, competent witnesses.

(Signed): Bary; Foucher; Broutin, Notary.

Antoine Lalande stated that he could neither write nor sign.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 5.

No. 8315. 4 pp.

Marriage Contract between Jean Duvivieir and Margueritte Bellomé.

Marriage Contract executed before the Royal Notary of the Province of Louisiana, residing in New Orleans, between Sieur Jean Duvivier, resident of this city, native of Darneville, Archbishopric of Paris, parish of St. Denis, of age and enjoying his full rights, son of the late Pierre Charles Duvivier, and of Marie Magdeleine Bonnevie, now living; and Demoiselle Margueritte Bellomé, native of this parish of St. Louis of this city, daughter of Sieur Gaspard Bellomé and of the late Marie Joumard, being authorized and assisted in the execution of the present contract by her father and her stepmother, both present.

Sr. Duvivier assisted by Sr. Antoine Lalande and by Sr. Jacques Nicolas, master gunsmith for the King in this colony, his friends, for want of relatives. Demoiselle Bellomé assisted by her father and her stepmother above mentioned; by Sr. Jean Baptiste Monget called Lalime, master locksmith; and by Sr. Felix Sicard, her friends.

Thus done and passed in the Notarial Office of this city, on January 5, 1763, at five o'clock in the afternoon, in the presence of Sieurs Marin Pierre Bary and Antoine Foucher, duly qualified witnesses.

(Signed): Duvivier; Foucher; Bary; Gaspard Bellomé; Monget; Felix Sicard; Broutin, Notary.

Marguerite Bellomé, her stepmother Madame Marie Boyer, Antoine Lalande and Jacques Nicholas declared that they could neither write nor sign.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 5.

2 pp.

Petition by Joseph Bailly for permit to cite Brazillier, who refused to deliver a cow, according to agreement made in 1748.

Petition to Monsieur Foucault, Councillor of the King, Commissioner of the Marine, Intendant of Louisiana, by Joseph Bailly, soldier of the Company de Noyon, representing that in order to settle certain business transactions with one Raimond Ferbos, he had accepted from him a note, or agreement of exchange, assented to by Sieurs Brazillier, dated September 12, 1748, by which note Sr. Brazillier promised and obligated himself to deliver a cow to the late Thomas Lefevre, whose widow married the said Ferbos, the said cow being given in exchange for a pirogue; and that the petitioner requested Sr. Brazillier to deliver said cow, but was met with a refusal.

Wherefore the petitioner prays that Sr. Brazillier be cited at the next session of the Superior Council, to be ordered to deliver to him the said cow together with the fruits thereof, since the date of said note; and to pay costs.

New Orleans, January 5, 1763. (Signed): Joseph Bailly.

Permit to cite.

January 5, 1763.—Permit to cite granted. New Orleans, January 5, 1763.

(Signed): Foucault.

Citation served.

January 6, 1763.—On the Request of Joseph Bailly, notice of citation was served on January 6, 1763, upon Sr. Brazillier, at his residence on the Bayou St. John, by Sheriff Lenormand, to appear before the Superior Council at the session of Saturday, January 15th, at nine o'clock in the morning. (Signed): Lenormand.

Document somewhat damaged at left margin and bottom.

January 10.

No. 8316. 5 pp.

Marriage Contract between Louis Dechaine and Jeanne Dulude.

Marriage Contract executed before the Royal Notary of the Province of Louisiana, residing in New Orleans, between Sieur Louis Dechaine, sergeant in a company of the colonial troops, native of St. Bertlevin, jurisdiction of Dumont, of age and enjoying his full rights, son of Sr. Jean Duchaine and of the late Renée Nourris; and Dame Jeanne Dulude, widow of the deceased Sieur Nicolas Cailleux called Deroziers, in his lifetime a resident of this colony.

Madame Dulude assisted by Sr. Antoine Marmillion, and by Sr. Michel Friloux called St. Eloy, both inhabitants of this colony, her friends, for want of relatives. Sieur Dechaine assisted by Sr. Nicolas Ducret called Belhumeur, and by Sr. Sinart Chevray called Montureux, both inhabitants of this city, his friends, for want of relatives.

Done and passed in the Notarial Office of this city, on January 10, 1763, at four o'clock in the afternoon, in the presence of Sieurs Marin Bary and Antoine Foucher, competent witnesses, residing here.

(Signed): Marmillion; Foucher; Monthureux; Michel Frilous; Bary; Broutin, Notary.

The contracting parties and Sr. Belhumeur stated that they could neither write nor sign.

Recordation of above marriage contract by order of the Superior Council.

January 27, 1763.—Considering the donation set forth in the Marriage Contract between Sr. Louis Duchaine, sergeant of the colonial troops, and Dame Jeanne Dulude, widow of the late Nicolas Cailleux called Derosier, and having heard the conclusions of the Procureur General of the King, the Superior Council ordered and does order that the said donation be recorded in the Register of Insinuations in the Registry of the Council, so that it may obtain its entire and full effect. Given in the Council-chamber, on January 27, 1763.

(Signed): Foucault.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 11.

No. 8317. 2 pp.

Testament of Antoine Lalande.

This Day, January 11, 1763, at eleven o'clock in the morning, on request of Sieur Antoine Lalande, a resident of this city, business partner of Sieur Jean Duvivier, the two living together, the Royal Notary of the Province of Louisiana, residing in New Orleans, went to the residence of said Sr. Lalande and found him sitting by the fireside, and appearing to be in good health and sound in body and mind.

Having recommended his soul to Almighty God, to the Most Holy Virgin Mary and to St. Anthony, his good patron Saint, he expressed his last will as follows:

He said and declared, by word of mouth, that his burial should be as simple as possible;

Item: he said and declared, by word of mouth, that soon after his death he wished his sole legatee, hereinafter named, to give and distribute the sum of 500 livres to the poor of the city, to those who, he sincerely believes, are in the greatest need;

Item: he said and declared, by word of mouth, that he designated and instituted as universal legatee and sole heir to all his holdings, movable and immovable, of whatever kind, that he owns in this colony, Sieur Jean Duvivier, his partner and friend, as a token of gratitude for all the attentions and care shown to the testator, who hopes that like attentions and care will be shown him for the remaining days of his life; therefore he desired and intended that everything he owns in this colony be turned over and remitted to said Sr. Duvivier, his friend, upon the condition that, should Sr. Duvivier die before his wife, named Marguerite Bellomé Duvivier, all the testator's property shall go to the Duvivier children; and, should Sr. Duvivier die without children,

the testator's property shall remain and belong to said Marguerite Bellomé, if such should be the wish of Sr. Duvivier, who is given power to dispose of the property as he may see fit.

Executed at the testator's residence, on said day, month and year, in the presence of Sieurs Marin Bary and Antoine Foucher, competent witnesses, residing in this city.

(Signed): Bary; Foucher; Broutin, Notary.

The testator, Sr. Lalande, declared that he could neither write nor sign.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 14.

No. 8319. 3 pp.

Procuration by Jean Dominque Bunel to Marin Lenormand, for sale of property and settlement of debts of Bunel, who is now in the jail as a prisoner, apparently for debt.

Before the Royal Notary of the Province of Louisiana, residing in New Orleans, in the presence of the witnesses hereinafter named and undersigned, personally appeared Sieur Jean Baptiste Bunel, goldsmith, at present kept a prisoner in the civil jail of this city, who said and stated that, for the purpose of settling his debts, he constituted, by these presents, as his general and special attorney Sieur Marin Le Normand, Sheriff of the Superior Council, to whom he granted full authority and power to sell a negress named Angelique and her two children, and also a portion of ground, on which stands a brick pavilion, situated at the corner of Bourbon and St. Ann streets, all belonging to the appearer, who authorized his attorney to sell said property to such persons, at such prices and upon such clauses and conditions as he may deem necessary or convenient; and to dispose of said negress and her two children, as well as of said piece of ground and building thereon, by judicial sale, to the last and highest bidder; and to use the proceeds of said sale for the payment and acquittal of the appearer's debts; to secure receipts, to pass all acts that might be required, to deliver deeds and documents; and in general to do all that, for any reason, may be necessary; promising to accept as satisfactory and to approve and ratify all that will be executed by the said constituted attorney.

Done and passed, behind the bars, in the civil jail of this city, where the Notary repaired accompanied by the witnesses, Sieurs Marin Bary and Pierre Bourcier, on January 14, 1763, in the morning.

(Signed): J. Bunel; Bary; Bourcier; Broutin, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 17.

No. 8320. 3 pp.

Marriage Contract between Yacinthe Ferret and Agnes Renaudiere.

Marriage Contract passed before the Royal Notary of Pointe Coupée, between Yacinthe Ferret, native of Cosne, St. Pierre Parish, bishopric of St. Malo, in Brittany, soldier of the detached Marine Troops, son of the late Julien Ferret, in his lifetime cloth merchant, and of Julienne Vilandre; and Agnes Renaudiere, widow of the late Guillaume Bergeron called Xaintonge, in his lifetime residing on False River.

Yacinthe Ferret assisted by Sieur Louis Renaud Duval, and by George Oliva, his friends, for want of relatives. Agnes Renaudiere assisted by Sr. Louis Armand Ducret, and by Sr. Baptiste Carmouche, her friends, for want of relatives.

Executed in the said Post, on January 17, 1763, in the afternoon, in the presence of Sieurs Pierre Ricard and M. Roujot, duly qualified witnesses.

(Signed): Oliva; Ducret; Duval; Benoist, Notary.

The contracting parties and Baptiste Carmouche declared that they could neither write nor sign. The witnesses did not sign.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 17.

No. 8321. 7 pp.

Appointment of Agnes Renaudiere as tutrix of her minor children.

On January 17, 1763, in the afternoon, before Mr. Claude Trenaunay Chanfret, Judge and Subdelegate at the Post of Pointe Coupée, personally appeared Agnes Renaudiere, widow of the late Guillaume Bergeron called Xaintonge, in his lifetime residing on False River; which appearer, by virtue of the said Judge's order written beneath her petition and dated the 11th of the present month, had convened the following persons: Laurant Vilee; Louis Armand Ducret; Mr. Nicolas de Longueval, officer of infantry; Estienne David; Louis Renaud Duval; Francois Emond; and George Olivo: all friends of George, sixteen years old; Pierre, fourteen years old; Louis, ten years old; Joseph, eight years old; Estienne, five years old; and Jeanne, from six to seven years old: all minor children of the said late Bergeron and of the said appearer, Agnes Renaudiere, his wife.

The aforesaid persons were assembled for the purpose of giving their advice on the selection of a tutor and of an undertutor to the said minors; and, having declared, under oath, that they would give an honest and sincere opinion on the matter, they unanimously designated the said Agnes Renaudiere as tutor,

and Sieur Louis Armand Ducret as under-tutor. The said advice of the family meeting was duly homologated by the Judge, and the said tutor and under-tutor took the requisite oath.

(Signed): Ducrest; de Longueval; Duval; Olivo; Trenaunay Chanfret; Benoist, Clerk.

Laurent Vilee, Estienne David and Francois Emond declared that they could neither write nor sign.

Inventory and appraisal of the property belonging to the succession of Guillaume Bergeron, as presented by Agnes Renaudiere, his widow.

January 17, 1763.—On the Day, month and year above stated, the following inventory and appraisal of the estate left by the late Guillaume Bergeron was presented by Agnes Renaudiere, widow of said Bergeron, the appraisal having been made by Mr. de Longueval, Louis Armand Ducret and Estienne David, friends of the family:

Four cows, appraised at 700 livres each, making a total of 2800 livres:	2800 – –
Item: two other cows, appraised at 600 livres each, making a total of 1200 livres:	1200 – –
Item: one heifer, appraised at 500 livres:	500 – –
Item: one horse, appraised at 300 livres:	300 – –
Item: six hogs, appraised at 700 livres:	700 – –
Lands and Buildings:	
Eight arpents of land, with a frame house thereon and a shed and a wooden fence, appraised at 5000 livres:	5000 – –
Item: two completely furnished beds, appraised at 300 livres:	300 – –
Item: four large kettles, appraised together at 400 livres:	400 – –
Item: three buckets with iron hoops, and one salting-tub with iron hoops: the whole appraised at 70 livres:	70 – –
Item: one frying-pan, appraised at 10 livres:	10 – –
Item: two large hatchets and a small one, appraised at 150 livres:	150 – –
Item: four old mattocks, appraised at 20 livres:	20 – –
Item: one flat adz and one hollow adz, appraised at 100 livres:	100 – –
Item: one ax-hammer, appraised at 70 livres:	70 – –
Item: one fly-wheel, appraised at 30 livres	30 – –
Item: one wimble and one chopper, appraised at 60 livres:	60 – –
Item: one double-handled knife and two shears, appraised at 15 livres:	15 – –
Item: one spade, one two-pound hammer, one chopper: the whole appraised at 30 livres:	30 – –

Item: thirteen used ropes, appraised at 100 livres: 100 – –
Item: fifty rolls of tobacco, appraised at 250 livres: ..... 250 – –
Item: seven tin spoons, two iron forks, one Fayence plate, four earthen pans, one water-jug: the whole appraised at 30 livres:..... 30 – –
Item: two old chests, appraised at 45 livres:..... 45 – –
Item: one cypress table, appraised at 30 livres:.... 30 – –

The said Agnes Renaudiere, widow of Guillaume Bergeron, declared there were due:
(a)– to Sieur Lamathe, the sum of 130 livres, as per statement rendered:..... 130 – –
(b)– to Sieur Verdun, the sum of 177 livres, as per statement rendered:..... 177 – –

And on said day, month and year, before Mr. Claude Trenaunay Chanfret, Judge and Subdelegate of the said Post of Pointe Coupée, appeared Agnes Renaudiere, widow of the late Guillaume Bergeron called Xaintonge, who declared, under oath, that, to the best of her knowledge, there was no other property belonging to the succession and to the community between her and her deceased husband to be inventoried. And she also declared that she could neither write nor sign.

(Signed): Ducrest; Trenaunay Chanfret; Benoist, Clerk.

Uncertified copy of inventory and appraisal annexed.

An uncertified copy of the above inventory and appraisal is attached to the document. It is signed at the bottom of first page: Devergés; De Reggio; Ducros; at bottom of second page: Ducrest; de Longueval; Davit; and on third page: Ducrest, witness.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 21.

No. 8323. 2 pp.

Procuration by Gerome Matutich to Francois Blache, to manage his affairs while he is absent on a privateering expedition.

Before the Royal Notary of the Province of Louisiana, residing in New Orleans, personally appeared Sieur Gerome Matutich, Corsair Captain, native of La Brasse, who, being on the eve of going to sea as a privateer against the enemies of the government, by these presents, appointed and constituted as his general and special attorney, Sieur Francois Blache, merchant of this city, to whom he granted full power and authority to manage, conduct and administer, in his name and stead, all the property and business of whatsoever nature belonging to the said appearer in this colony; to pay all debts and to secure receipts;

to receive all that may be due him by notes, promises, obligations or otherwise and to give discharges; and in case of default or of refusal of payments by his debtors, to have them compelled thereto by all possible lawful means; to obtain judgments, sentences and decrees, seizures, executions and sales; to represent him in everything and everywhere; to compromise, to pass and sign acts, deeds and contracts; to proceed to liquidations and divisions; to constitute one or more attorneys and to substitute or revoke them; to do all that could be done by the appearer himself if he were present; and to do all that any circumstances may require without making it necessary to confer upon the said constituted attorney any other or more special power than the one contained in these presents; promising to accept as satisfactory and to approve and ratify all that will be executed by said attorney, even if not specifically mentioned in these presents.

Done and passed in the Notarial Office of this city, on January 21, 1763, in the presence of Sieurs Marin Bary and Antoine Foucher, duly qualified witnesses.

(Signed): Matutich; Foucher; Bary; Broutin, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 22.

No. 8325. 9 pp.

Loan of 8380 livres by Francois Louis Briant, acting as tutor of the minor children of the late Nicolas Adam called Blondin, to Marie Josephe, widow Soileau, of Pointe Coupée. Loan made for one year, with the approval of the Procureur General.

Before the Royal Notary of the Province of Louisiana, residing in New Orleans, in the presence and with the consent of Mr. De la Lande, Councillor of the Superior Council, acting Procureur General of the King, personally appeared Sieur Francois Louis Briant, merchant of this city, in the name and as tutor of the minor children of the late Sr. Nicolas Adam called Blondin; who declared that, intending to invest certain funds at his disposal and which belong to the said minors, who inherited the same from the succession of their deceased father, he had decided to loan the sum of 8380 livres to Dame Marie Josephe, widow of Soileau, inhabitant of Pointe Coupée, at present in this city, who appeared also before the abovementioned Notary. Madame Soileau acknowledged having received today in cash from Sr. Briant the sum of 8380 livres, in colonial currency, which she promised and obligated herself to return and pay back either to Sr. Briant or to the said minors or to whomsoever else it may concern, within one year from this day, together with the interest as the rate of five per cent, in compliance with the King's decree, in security whereof she granted a mortgage on all her property, movable and immovable, present and future, fixing, for this purpose, her domicile at the residence of Madame De-

vaugny, in this city, where she consented that all acts necessary and required for the execution of these presents, be done and passed. At the execution of this obligation there intervened also Mr. Paul Augustin Le Pelletier De la Houssaye, Knight of the Royal and Military Order of St. Louis, Town Major of this city, who voluntarily offered himself as guarantor in behalf of said Madame widow Soileau for the said sum of 8380 livres, and granted a mortgage on all his property, present and future, movable and immovable. Thus done and passed in the Notarial Office of this city on January 22, 1763, in the morning, in the presence of Sieurs Marin Pierre Bary and Antoine Foucher, competent witnesses, residing in this city.

(Signed): Le Chev. Delahoussaye; Widow Soileau; Briant; Bary; Foucher; Delalande; Broutin, Notary.

Payment of the above loan, with interests and costs, in the total sum of 9680 livres, by De Vaugine in behalf of Madame Soileau, February 1, 1766.

February 1, 1766.—Today, February 1, 1766, at nine o'clock in the morning, before the Royal Notary of the Province of Louisiana, residing in New Orleans, personally appeared Sieur Francois Louis Briant, in the name and as tutor of the Adam minors, who acknowledged and confessed to have received in cash from Sr. De Vaugine, Captain of the troops garrisoned in this city, the sum of 8380 livres in colonial currency, in reimbursement of a like amount that Sr. Briant had loaned to Madame Marie Josephe Soileau, who is now the wife of Sieur Mont Quentel; and the said appearer also acknowledged and confessed having received from the said Sr. De Vaugine, the additional sum of 1300 livres for interest, the interest for the first year having been paid by the said Madame Soileau; and also the additional sum of eighty livres for costs incurred by Sr. Briant: said entire payment making up a total of 9680 livres, for which Sr. Briant acquitted said Madame Soileau and promised to have her acquitted also towards and against whomsoever else it may concern, of the principal, interest and costs arising from said obligation; while Sieur De Vaugine reserved the right to claim reimbursement of the said total amount from Madame Soileau, as he may see fit.

Executed in the Notarial Office of this city, on the day, month and year stated above, in the presence of Mr. Hery Duplanty and Mr. Maison, Sheriff, duly qualified witnesses, residing here.

(Signed): Briant; F. Hery, witness; J. Maison; Vaugine.

The signature of Garic, the Notary, is missing, although the document appears to be an original act.

Decision rendered by the Superior Council in the case of Briant, as tutor of Adam minors, vs. Madame Soileau.

October 5, 1765.—Extract from the Records of the Superior Council of October 5, 1765: Between Sieur Briant, in the name and as tutor of the Adam minors, plaintiff; and Madame widow Soileau, defendant.

Considering the plaintiff's petition, the order and citation of July 24th last, the said petition representing that the plaintiff, by act passed in the Registry on January 22, 1763, on the guaranty of Mr. de la Houssaye, former Town-Major of this city, had loaned to the defendant the sum of 8380 livres, in the former currency of the colony, out of the funds belonging to the Adam minors; that the plaintiff is urged to give an account and to deliver the portions coming to Sieur Connard and Sieur Nicolas, as husbands of Jeanne Adam and Marguerite Adam; that the plaintiff has made several demands in writing on the defendant and failed to receive any response;

Wherefore the plaintiff prays for permit to have the said defendant cited at the next session of the Superior Council, to hear herself condemned to pay the plaintiff the said sum of 8380 livres, together with the interest due and the costs.

The Superior Council, having heard the conclusions of the Procureur General of the King, condemned and does condemn Madam the widow Soileau to pay the plaintiff, in his capacity of tutor for the Adam minors, the sum of 8380 livres, in formal colonial notes; and to pay also the interest due and costs.

Decision rendered in the Council-chamber on October 5, 1765. By the Council. (Signed): Garic, Clerk.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 24.

No. 8327. 2 pp.

Deposit in the Registry of 29,198 livres and one sol by Jean Baptiste Chateau and Donato Bello, following judgment rendered by Foucault in lawsuit between them and Delassize.

This Day, January 24, 1763, at nine o'clock in morning, appeared in the Registry of the Superior Council, Sieur Jean Baptiste Chateau and Sieur Donato Bello, partners and merchants of this city, who stated that, in reference to a lawsuit between them and Sieur Delassize, a judgment was rendered on the 22nd of the present month by Mr. Foucault, acting Intendant and First Councillor of the Superior Council. The said judgment, a notice of which was served on the appearers today, ordered them to pay the sum of 29,198 livres and one sol to Sr. Delassize; and, waiting for a better conclusion of the whole affair, the appearers requested the Clerk to accept, as a deposit

in trust, the said amount, which was paid in cash in Treasury notes, currency of this colony, and which the appearers intended should be at Sr. Delassize's risk, hazard and peril. Upon request of the depositors, a certified copy of the present act was granted to them.

(Signed): Chateau; Donato Bello; Broutin, Clerk.

Above deposit restored to the depositors by the Clerk.

January 29, 1763.—On January 29th, at two o'clock in the afternoon, appeared in the Registry of the Superior Council, Sieurs Jean Baptiste Chateau and Donato Bello, partners and merchants of this city, who acknowledged and confessed to have received this day in cash, from Broutin, Chief Clerk, the sum of 29,198 livres and one sol, in colonial currency, on which they paid the deposit fee, and for which they discharged the said Clerk, and promised to have him released also towards and against whomsoever else it may concern.

Executed in the presence of Sieurs Marin Bary and Antoine Foucher, duly qualified witnesses.

(Signed): Chateau; Foucher; Donato Bello; Bary.

The Clerk's signature is missing.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 25.

No. 8329. 1 p.

Release by Guillaume Lemoine called Le Normant to Nicolas Lamathe.

Before the Royal Notary of Pointe Coupée appeared Guillaume Lemoine called Le Normant, inhabitant of this Post, who, by these presents, acknowledged having received from Sieur Nicolas Lamathe the amount that the latter owed him for the land that was farmed out by said Lemoyne to said Lamathe, for the past five years, as well as for all the slaves, cattle and implements that were delivered to said Lamathe by means of a deed under private signature; for which sum, slaves, cattle and implements Sr. Lamathe was discharged by Sr. Lemoine, who promised to have him released also by whomsoever else it may concern. Done and passed at the said Post of Pointe Coupée, on January 25, 1763, in the morning, in the presence of Sieurs Bertrand Guichanduc and Guillaume Marre, competent witnesses, residents of the said Post, who signed these presents, together with the Notary, while Sr. Lemoine stated that he could neither write nor sign.

(Signed): B'nd Guichanduc; Marre; Benoist, Notary.

(Signed, in margin): Devergés; De Reggio; Ducros.

January 25.

No. 8330. 2 pp.

Contract of partnership for cutting cypress lumber, between Nicolas Lamathe and Guillaume Lemoyne called Le Normant, both of Pointe Coupée.

Before the Royal Notary of Pointe Coupée personally appeared Sieur Nicolas Lamathe, merchant of this Post, on one side; and Sieur Guillaume Lemoyne called Le Normant, inhabitant of this Post, on the other side.

The two parties, by these presents, declared, that they had formed a partnership for two years, to start on August 1st of the present year and to end on August 1st of the year 1765. The purpose of the said partnership is to cut cypress lumber of all sizes. The partners shall furnish, at joint expense, all the necessary tools, such as hatchets, wimbles, hooks and rope. Sr. Lemoine shall furnish four negroes and two negresses; and Sr. Lamathe shall contribute four negroes, two negresses and one white man, this last to be paid at joint expense, and he shall also provide two yoke of oxen together with their harness and carts. The net profit from said lumber trade shall be divided in equal shares between the partners, each of whom shall have the right to draw his portion at the beginning of the month of March for his living. Each partner shall furnish his laborers with provisions. If one of the partners, without good cause, takes away some of the negroes, he shall pay to the other fifty livres per day. Should one of the contracting parties repudiate the present agreement, he shall pay to the other the sum of two thousand livres. Thus done and passed in the said Post of Pointe Coupée, on January 25, 1763, in the morning, in the presence of Sieurs George Baron and Guillaume Marre, duly qualified witnesses.

(Signed): Lamathe; Baron; Marre; Benoist, Notary.

Guillaume Lemoyne declared that he could neither write nor sign.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 27.

No. 8331. 3 pp.

Marriage Contract between Victor Puel called Languedoc and Agnes Fremont.

Marriage Contract passed before the Royal Notary of the Post of Pointe Coupée, between Victor Puel called Languedoc, native of St. Cyr parish, bishopric of Baure, private soldier of the Company commanded by Mr. Grandpré, garrisoned at this Post, son of Barthelemy Puel and of Catherine Carelle; and Demoiselle Agnes Fremont, daughter of the late Jean Fremont and of Jeanne Via, assisted by Esprit Joseph Prevé, her stepfather, residing on False River, stipulating for her.

Victor Puel assisted by Sieurs Jean Lambert and Jacques Francois Tagaut, his friends, for want of relaitves. Demoiselle

Fremont assisted by said Sr. Prevé, her stepfather, and by Sieurs Pierre Ricard and Em. Roujot, her friends, for want of relatives.

Done at Pointe Coupée, on January 27, 1763, in the morning, in the presence of the aforementioned witnesses.

(Signed): Roujot; Ricard; Lambert; Tagaut; Benoist, Notary.

The contracting parties declared that they could neither write nor sign.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

January 29.

No. 8333. 14 pp.

Petition by Nicolas Verret for permit to sell a house and lot in New Orleans.

Petition to Mr. Foucault, acting Intendant and First Councillor of the Superior Council of the Province of Louisiana, by Nicolas Verret, who represents that he desired to sell a piece of ground situated on Bourbon Street, adjoining on one side the property of Mr. Bauré and on the other side the property of Mr. Larose, measuring sixty feet frontage by a depth of one hundred and twenty feet, on which stands a frame house and other smaller buildings; and he prays to be allowed to sell the said property, by complying with the customary procedure.

New Orleans, January 29, 1763. (Signed): Verret.

Permit granted.

January 31, 1763.—Sale allowed, according to the usual formalities, before Mr. Chantalou, Assessor of the Superior Council, who was appointed Commissioner for said purpose, and in the presence of the Procureur General of the King.

New Orleans, January 31, 1763. (Signed): Foucault.

Posting of the three notices of the sale.

February 6, 13, 20, 1763.—Notice of sale published in the customary places by Sheriff Lenormand, on February 6th, 13th, and 20th. (Signed): Lenormand.

First auction.

February 8, 1763.—On February 8, 1763, at nine o'clock in the morning, upon petition of Sieur Nicolas Verret, inhabitant of this colony, and by virtue of the order, dated January 31st last, of Monsieur Foucault, acting Commissioner of the Marine, Intendant and First Councillor of the Superior Council, granting permit for the sale of a parcel of ground and the buildings thereon, situated on Bourbon Street in this city, Mr. Augustin Chantalou, Councillor Assessor, appointed Commissioner in this case, accompanied by Mr. Charles Marie De la Lande D'Apremont, Councillor also of the Superior Council, acting Procureur Gen-

eral of the King, and by the Clerk and the Sheriff of said Council, went to the bar of the Court for the purpose of receiving the first bids leading up to the sale and adjudication, to the last and highest bidder, of a piece of ground belonging to said Sr. Nicolas Verret, situated on Bourbon Street, measuring sixty feet front by a depth of one hundred and twenty feet, on which stand: a raised house, thirty feet long by sixteen feet wide, containing in the front a hall and a room furnished with a double brick chimney, and also another large room divided into two small ones, each eight by eight feet; and, in the rear, a gallery six feet wide; the whole with wooden floors and ceilings, shingle roof, and doors and windows closing with lock and key; a kitchen, sixteen by twelve feet, with a brick chimney and a door closing with lock and key; another building used as quarters for negroes, about the size of the kitchen; an oven of brick; a well; and other minor conveniences and accommodations; the said ground being enclosed by a wooden fence, and adjoining the property of Sr. Bauré on one side, and the property of Sr. La Rose on the other side.

And being there, and having seen the procès-verbal of the placarding and advertising made in the customary places of the city by Marin Le Normand, Sheriff, and many persons being gathered there, it was proclaimed by the Sheriff, in a loud and audible voice, that the said sale was going to take place upon the condition that the purchaser pay in cash half of the price of adjudication, together with all the judicial costs, and the other half to be paid within three months; whereupon Sieur Louis Boisdoré offered a bid of 9000 livres, raised to 9500 by Sr. Durel, and to 10,000 by Sr. Bary; and no other bid having been presented, the placarding and advertising for the second judicial sale was ordered by the Councillor Commissioner. (Not signed.)

Second auction.

February 17, 1763.—The Second auction was held on February 17th, with the following bids: by Sieur Durel, 10,200 livres; by Sr. Boisdoré, 10,350 livres; by Sr. Bary, 10,500 livres; and no other offer having been made, Mr. Chantalou, Commissioner in the case, ordered the advertising for the third sale.

Third auction.

February 22, 1763.—The Third auction took place on February 22nd, with the following bids: by Sieur Bauré, 12,000 livres; by Sr. Boisdoré, 13,000; by Sr. Lombard, 15,000; and by Sr. Boisdoré 16,000 livres. And no higher bid having been offered, on request of the said Sr. Verret, the Councillor Commissioner, with the consent of the Procureur General of the King, directed that new placarding and advertisement be effected on Sunday, March 13th, in the customary places in the city, concerning the fourth and last judicial sale to be held on Monday, the following day.

Fourth and final auction.

March 14, 1763.—On March 14th the last sale was opened at nine o'clock in the morning, but no bid having been offered, at eleven o'clock the Councillor Commissioner, with the consent of the Procureur General of the King and of Sieur Fleury, acting under procuration of Sr. Verret, adjudicated purely and simply the said piece of ground and the improvements thereon, to Sieur Boisdoré, as the last and highest bidder, who declared that his offer was made by virtue of a power of attorney granted him by Sr. Verret.

(Translator's Note:—The document ends here and appears to be incomplete. It is an unsigned copy, and is well written and well preserved.—G.L.)

January 30.

No. 8334. 1 p.

Marriage Contract between Joseph Prunet and Jeanne Via, passed before the priest at Pointe Coupée on May 23, 1752, now deposited in the Notarial Office of Pointe Coupée.

This Day, May 23, 1752, before me, Fr. Barnabé, Capuchin Priest, Apostolic Missionary and Pastor of the Church of St. Francois of Pointe Coupée, Bishopric of Quebec and Province of Louisiana, appeared Joseph Prunet and Jeanne Via, both inhabitants of this parish, who, of their own accord, promised to marry each other before Our Mother the Holy Church after the required publications and ceremonies; and the said Joseph Prunet declared, in the presence of the said Jeanne Via, that he had previously given her a plot of land measuring four arpents in front by the usual depth, cleared and under cultivation and planted in vegetables, corn and tobacco; and he said that if they should have no children he will bequeath by testament such property to her, who will become the owner of same after his death, and will also bequeath her all other holdings that they might acquire together, so that she may dispose of all such property as she may please; and the said Jeanne Via declared that she is the owner of a piece of land measuring four arpents in front by the ordinary depth, planted also in vegetables, corn and tobacco, and in the presence of said Joseph Prunet stated that she intends that said land shall belong to her son, by her first marriage with the late Jean Fremont, in the event that she had no children by the marriage with Joseph Prunet; and if some children by the second marriage should come, the two appearers declared, in the presence of the undersigned witnesses, that all their children shall divide, in equal shares, all the appearers' property, and that this is their will. The whole done on said day, month and year; and the appearers stated that they do not know how to sign.

(Signed): Fr. Barnabé, as qualified above; Francois, witness; Josef Provost, witness; Antoine Patin, witness.

(Translator's Note:—In this act the Capuchin Father is acting in the capacity of Notary.—G.L.)

Deposit of above Marriage Contract in Notarial Office of Pointe Coupée.

January 30, 1763.—Today, January 30, 1763, before me, Notary undersigned, appeared Joseph Prenet, who deposited these presents so that they may be used as it may be fit. On said day and year. (Signed): Benoist, Notary.

The document is in bad condition and partially destroyed.

January 31.

1 p.

Fragment of the defense of Mr. Dubois in the suit of Madame De la Pommeraye vs. Dubois, over a negro who had died while hired to defendant.

(Missing) . . . , dated November 30th, presents a much more vivid picture than the ones previously given, as to just the kind of man Madame De la Pommeraye's negro was.

The defendant has reason to expect, Your Excellencies, that the Court will examine the minutes hereto annexed; consequently, he will state that it is untrue that he had said that he would replace the dead negro by furnishing an old one, and it is incredible that Madame De la Pommeraye can prove what she asserts, so much the more so, that the defendant is well convinced that all negroes and other slaves that are hired, cannot be paid for by the lessee when they die a natural death, and the Surgeon's statement does not say that the negro died a violent death, but states that he died from inanition. Therefore the lessee is not liable.

For all the reasons hereinabove set forth, the defendant concludes that it may please Your Excellencies to reject all the demands of Madame De la Pommeraye and to condemn her to pay all expense and costs. And you will do justice.

New Orleans, January 31, 1763. (Signed): Dubois.

February 1.

3 pp.

Petition to the Superior Council by L. Chancelier, as tutor of the Chevalier minors, for permit to give an account of his administration in Illinois, where he took charge of the Chevalier succession, since he is unable to produce any voucher here; said account to be rendered to the new tutor appointed by the family meeting of relatives and friends of said minors, who think that Chancelier is in financial distress and insolvent.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by L. Chancelier, as tutor of the minor children of the late Sieur Chevalier, in his lifetime storekeeper for the King in Illinois, representing:

That Sieur Barqueville, son-in-law of said late Chevalier, has summoned the petitioner before the Superior Council on November 22, 1762, to show cause why the recommendations of the family meeting of relatives and friends of the said minors should not be homologated; the said family meeting having been convened by virtue of an order of Mr. Foucault, rendered on Sieur Barqueville's petition, which set forth that he had married a daughter of the late Sr. Chevalier, that the financial condition of Chancelier was bad, and that another tutor should be appointed;

That, on account of sickness, the petitioner was unable to appear, on November 22nd last, before the Council, to which he forwarded his defense, to show that the contention of Sieur Barqueville was unfounded, when he alleged that he required another tutor in order to secure his wife's holdings;

That Sr. Barqueville's complaint was unjustified, since the petitioner, willingly and at his own risk, had advanced him the sum of 22,000 livres, while all the holdings of the Chevalier succession remain in petitioner's hands for the reasons explained in the attachment proceedings;

That the said defense was not presented so much for the purpose of retaining this onerous tutorship as to prove that it was to the best advantage of the minors that no change of tutorship be made until the presentation of the King's accounts, which is to take place upon the decision of the Court;

That the petitioner be allowed a delay of one year, in which to file his account, in the event that it would please the Council to homologate the said advice of the family meeting of relatives and friends, who designated another tutor on Sr. Barqueville's petition;

And referring to the following order of December 4th last: "The Council, having heard the conclusions of the Procureur General of the King, ordered and does order that the recommendations of the family meeting of relatives and friends be approved and homologated; that Sieur Chancelier give an account of all the holdings of the successions of the late Sieur and Madame Chevalier to Sieur Barqueville, within three months, before Mr. Chantalou, Commissioner appointed in the case, and in the presence of the Procureur General of the King;" the petitioner prays that the Council consider that by said order it demanded from him an impossible thing; that no tutor was ever subjected to such whimsical treatment at the hands of the minors under his tutorship; that, if such a thing were allowed, every day minors would ask for an accounting; that, moreover, a delay of one year was oftentimes granted by the Council to tutors residing in New Orleans and administering successions that were in the place of their appointment, while now the Council directs the petitioner: first, to give an account to a minor who pretends to be emancipated because he is a commissioned officer, which capacity does not relieve him from the necessity of acting through a curator; second, to give an account of a succession that is more than five hundred leagues from New Orleans.

The petitioner prays, therefore, that he be allowed to show how impossible it is for him to comply with said order, since he has no deeds nor vouchers concerning the account to be rendered, which documents are quite numerous; and the reasons why he can-

not produce such documentary evidence are: first, because he never thought that he would be ordered to render an account in a place different from the one in which he received the succession; second, because he did not consider it advisable to carry on his person all such documents, believing that their loss during the long journey, through an attack by savages, or for any other reason, would have reduced his family to poverty through his inability to prove his expenditures, namely: the debts of the deceased which he paid in compliance with the orders of Messrs. Buchete and Derneville; amounts expended for the maintenance and support of the minors; the funds remaining in his hands for investment, after having invested 72,000 livres in the minors' behalf; that, in a word, no matter what accident might have befallen those documents, the petitioner would have been blamed for having exposed them to the danger of such a long voyage, while, in all probability, they would not have been of any use in this city.

The petitioner, vexed by the talk of the minors' relatives, who are spreading everywhere a report that he is ruined and utterly unable to repay the minors, prays Their Excellencies of the Superior Council that they may be pleased to approve and homologate the advice of the family meeting of the relatives and friends, who appointed another tutor, and to order the new tutor to repair to Illinois to receive from the petitioner the account of his tutorship, together with all funds, holdings, titles, deeds and documents, this to take place fifteen days after the petitioner's arrival at his residence; and again petitioner proclaims the impossibility of his giving an account here, since he is deprived of all documents. And justice will be done.

New Orleans, February 1, 1763. (Signed): L. Chancellier.

February 3.

2 pp.

Statements of Monget Lalime and Julien Vienne concerning price of a negress belonging to Timballier:

Monget Lalime's statement.

I, the Undersigned, certify for all whom it may concern, that, while I and Sieur Benois, a resident of the German Coast, were at the residence of Sieur Timballier, said Sr. Benois asked Sr. Timballier if he would sell him his negress, and that if he would come to a decision, he (Benois) would pay him in cash the sum of 2500 livres; whereupon I, the undersigned, answered that I would have given 3000 livres if he would sell said negress to me, and the matter remained without further development; in faith whereof I have executed these presents for what they are worth.

At New Orleans, this January 10, 1763. (Signed): J. Monget Lalime.

Julien Vienne's statement.

Some years ago Sieur Timballier owed me a certain sum and he owned a negress which I would have accepted in settlement of my claim, since I understood that he was not in a position to settle with me in any other way, and I offered 2600 livres, if he was willing to trade with me, I having put a high price on the said negress.

At New Orleans, February 3, 1763. (Signed) : J. Vienne.

February 4.

2 pp.

Petition by Louis Michel Grenon De Flottemanville for dismissal of opposition of Joseph Becat to sale of former's plantation to Madame Azemare.

Petition to the Superior Council of the Province of Louisiana by Louis Michel Grenon De Flottemanville, who represents that, by act under private signature, herewith annexed, he sold his plantation to Madame Azemare on November 16th last; that seals have been affixed at the customary places; that he desires now to execute before the Notary the said sale to Madame Azemare, who is actually in possession of the aforesaid land; that opposition to said sale was made by Sieur Joseph Becat, who claims from the petitioner a portion of the succession of the late Sieur Amiault Dausseville, the administration of which succession was conducted by the late Sieur Barbin, Attorney for Vacant Estates and first husband of Sr. Becat's wife; that the petitioner for over a year has ceased to be the tutor of Sr. Barbin's minor children; that all the holdings of the Barbin succession were partitioned and that he has rendered his accounts and delivered all the papers to Mr. Voisin, maternal grandfather of the minors, in the presence of Messrs. De la Lande, Procureur General of the King; De la Chaise and Chantalou, Councillors of the Superior Council; and of Broutin, Chief Clerk of said Council.

Whereupon petitioner very humbly prays the Court to dismiss the opposition made by Sr. Becat to the sale of his plantation and to allow him to execute the said sale to Madame Azemare before the Notary, and to refer said Sr. Becat to said Sr. Voisin, who is in possession of all documents concerning the aforesaid succession; and to order the payment to the petitioner of the sum of 8000 livres of annual income, according to stipulation set forth in the said act of sale under private signature, because, if deprived of said income, he would not be left any means for the support of his wife and three children. And justice will be done.

New Orleans, February 4, 1763. (Signed) : Flottemanville.

February 4.

3 pp.

Defense of Jean Baptiste Brazilier against demand of Joseph Bailly, that he discharge an obligation by the delivery of a cow.

To Their Excellencies of the Superior Council of the Province of Louisiana:

Defense which Jean Baptiste Brazillier, a resident of the Bayou St. John, has the honor to present against the demand of Joseph Bailly, soldier in a company of troops garrisoned in this colony:

It is with astonishment, Your Excellencies, that I find myself troubled today on account of a heifer which I bound myself to deliver in this city by the first cattle boat that would come to this port, to one Thomas Lefevre, a former resident of this city, according to my promissory note of September 12, 1748, of which the said Bailly is now the holder, said note having been transferred to him by one Ferbos, a resident of this city, as husband of the widow of said Thomas Lefevre; and I have the honor to explain:

First: some time after I gave said promissory note, which is now in Bailly's possession, the abovementioned Thomas expressed a wish to have a musket that I had, and signified his willingness to accept said musket in lieu of the cow, if I agreed to such a bargain. Having accepted his proposition I delivered the musket to him and asked for my promissory note. He said that he had not the note on his person at that moment and that he would deliver it to me at our first meeting; then, a few days afterwards, said Thomas told me that he had lost my promissory note and he granted me an acknowledgement by which he cancelled the note, which acknowledgment I threw in the fire and destroyed, together with other papers, after my father's death, in the belief that such document had lost all value and usefulness, as twelve or thirteen years had elapsed and no one had presented the note to me. That I have discharged said note is proven by the fact that after the decease of said Thomas Lefevre I bought some cattle that he had at Chef Menteur, and surely his widow would have, on said occasion, claimed the delivery of the cow in question, had the note not been cancelled;

Second: after said Lefevre's death an inventory was taken of all his holdings, papers, documents, deeds, titles, etc., and my promissory note did not appear on said inventory, and his widow would not have neglected to call on me for its payment if it had been in her possession. And the abovementioned Raymond Ferbos, her second husband, never presented the note to me before, which note at present is of no value on account of prescription, even if I had not discharged it.

For all the foregoing considerations the defendant prays that it may please Your Excellencies to dismiss the demand of said Bailly, concerning the said cow and her fruits, to decree that the promissory note above dated is null and void since it had been

discharged; and that the prescription, according to the Custom of Paris, makes it null by operation of law, which fixes the time of prescription at ten years between parties who are present, and twenty years between parties who are absent. Costs on said Bailly also.

New Orleans, February 4, 1763. (Signed): Brasillier.

February 5.

2 pp.

Petition to the Superior Council by Jean Louis Billaud against Bastien, his uncle and former tutor, for possession or seizure of cattle coming to petitioner and his two brothers from succession of their late parents.

Petition to the Superior Council of the Province of Louisiana by Jean Louis Billaud, inhabitant of this colony, both in his own name and as tutor of his two minor brothers, all being heirs of the late Louis Billaud and of the late Eve Frederic, their father and mother, representing:

That he had obtained an order of the Superior Council, dated December 6, 1760, directing Bastien, their uncle and former tutor, a resident also of this colony, to deliver to him nine horned cattle and two-thirds of their young, the total of which was thirty-three in number; that the said order had been served on said Bastien, according to the return of Bary, Sheriff, on December 9, 1760, and on the following January 3rd; that said Bastien has not yet entirely complied with said order, having so far delivered to petitioner only nine cows, seven heifers and eight calves; that said Bastien refused to comply with the request for delivery of the remaining seven cattle and certain effects, that had been entrusted to him according to inventory.

All this considered, the petitioner prays that it may please Your Excellencies of the Superior Council to order that he be allowed to take possession of the said seven cattle; or, if Your Excellencies prefer, to allow the petitioner to have said cattle seized and thereafter delivered to him; and that it may please You also to direct said Bastien to deliver all the effects with which he was entrusted, according to inventory; and to pay also all expense and costs. And you will do justice.

New Orleans, February 5, 1763. (Signed): Ordinary mark X of Jean Louis Billaud.

February 5.

1 p.

Petition to the Superior Council by Boré, tutor of the minor heirs of late Joseph

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Sieur Boré, who has the honor to represent that, considering the demands of the heirs of age, of the late Sieur Joseph Carriere, to which demands he cannot yield without ignoring the law and prejudicing the minors' interests, with which he is entrusted in his capacity of tutor:

Carriere, stating that he is unable to comply with the demands of the heirs of age and requesting that his resignation as tutor be accepted, and suggesting that one of the heirs of age be appointed as his successor.

He prays Your Excellencies that it may please You to accept his resignation as tutor, in behalf of one of the heirs of age, as one of them should have been appointed tutor from the beginning of the tutorship, in lieu of the petitioner, because they know how to administer the affairs concerning the tutorship. And the petitioner also states the impossibility of his managing the tutorship any longer, since he desires to avail himself of the first opportunity of going to live in France.

New Orleans, February 5, 1763. (Signed): Boré.

February 5.

1 p.

Petition to the Superior Council by Julien Vienne for ratification of survey of a plot of land sold to Jacquelin.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Sieur Julien Vienne, who explains that on June 30th last he sold to Sr. Jacquelin a parcel of land measuring six arpents front, adjoining the property of Sr. Dupart on one side and that of a free man of color on the other side, for the sum of 80,000 livres; and that, by virtue of the order herewith annexed, a survey was effected, as shown by the documents also hereto attached.

And he prays that it may please Their Excellencies to ratify the said survey, and to direct that the temporary boundary established for said land be considered as the true one; consequently, that his request of August 3rd last be granted. And justice will be done.

New Orleans, February 5, 1763. (Signed): J. Vienne.

The documents referred to as being attached are missing.

February 5.

3 pp.

Petition to the Superior Council by Pierre Voisin, as tutor to the minor children of the late Nicolas Godefroy Barbin, requesting a family meeting to consider De Flottemanville's request for 1200 livres to buy clothing for two Barbin minors, of whom he had taken charge; and asking that said two minors be turned over to him.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Pierre Voisin, grandfather and tutor of the minor children of the late Sieur Nicolas Godefroy Barbin, representing:

That Sieur De Flottemenville, the said minors' stepfather, has voluntarily taken charge of two of the boys, whom he will maintain for the sum of 500 livres per year for each, as per agreement made between Sr. De Flottemenville and the following minors' relatives: Sieur Guinault, Sr. Voisin, Jr., Sr. Villiers and the petitioner, all acting in a family meeting for the said minors; that petitioner represented that it was not proper to waste all the minors' funds, and that Sr. De Flottemenville should have been satisfied with the allow-

ance agreed upon; that Sr. De Flottemenville, in spite of petitioner's remonstrances, does not properly treat the two boys, who have no clothes and only one worn-out blanket for both.

All this considered, the petitioner prays that it may please Their Excellencies of the Council to order that the two boys be placed in his custody this very day; and, as they are in urgent need of clothing, that they should be at once furnished with all they require, at the expense of whom it may concern; that a family meeting of the minors' relatives be convened before Their Excellencies of the Superior Council: first, to obtain a full accounting for the said two boys and for all the other minors, and to decide upon the safest investment of their funds; secondly, to appoint another tutor to replace the petitioner, who presents his resignation, having passed his seventieth birthday, and being consequently exonerated by law from all the burdens of tutorship. And justice will be done.

New Orleans, February 5, 1763. (Signed): P. Voisin.

Permit granted for family meeting to deliberate on requests in the above petition; and two minors ordered turned over to custody of Pierre Voisin immediately.

February 5, 1763.—Permit granted to convene a family meeting of relatives and friends of the Barbin minors, the said meeting to take place before Mr. Chantalou, appointed Commissioner in the case, and in the presence of the Procureur General of the King, to decide on matters referred to in above petition. In the meanwhile Sieur Voisin is allowed to take into his custody the two minor boys, and to provide for them.

Given in the Council chamber, on February 5, 1763.

(Signed): Kerlérec; Delaunay; Fremeur; Delachaise; Delalande; Chantalou.

February 5.

3 pp.

Petition to the Superior Council by Carriere heirs, opposing the decision of family meeting recommending judicial lease of the estate; and requesting judicial sale of holdings of succession and partition of the proceeds among the heirs.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Joseph Carriere, André Carriere, Louis Carriere and Jacques Carriere, of full age, and Mathurin Carriere, minor: all children and heirs of the late Joseph Carriere, their father stating:

That they learned that on December 7th last a family meeting of relatives and friends was held, to deliberate on the succession of the said deceased Joseph Carriere, on the petition of the tutor, who was appointed to preserve the minors' estate; and that the said deliberation were detrimental to their interests; that on the same day of December 7th last, the petitioners went to the Registry of the Superior Council to file their opposition to the decision of the

said family meeting, and to protest against the validity of all that was done and ordered, as being contrary to their interests; that said meeting should be held null and void, since it was convened without complying with the formalities required by the Court's order, because the Commissioner appointed in the case, before whom it should have taken place, was unable to attend on account of illness; that the said family meeting was convened without summoning the minors' brothers of full age, who were ignored, as were also ignored the closest relatives, while strangers were invited to participate, such course of procedure appearing quite strange, when one considers that the petitioners should be called upon first to express their judgment, as the most interested parties; that the resolution of the family meeting to the effect that the farm of said succession be judicially leased is detrimental to the interests of the heirs of age and of the minors, considering that the income from the farm is less than half of what is necessary for the maintenance of the minors; moreover, other ill consequences may follow, such as the death of some negroes, or of cattle, with a loss to the heirs of age and to the minors alike; and also the damage that would be occasioned to the houses and all buildings for want of necessary and urgent repairs;

That one of the main reasons why the said family meeting has decided in favor of a judicial lease of the farm is based upon the supposition that probably His Majesty will order a reduction in value of the colonial currency; but is this a sufficient reason? Certainly not, as it is destroyed by the opposite supposition. As a matter of fact, is it not equally easy to believe that His Majesty will not order any loss on the notes of the colony, as it is to think that such order will be issued, since there is nothing certain on the subject? And if the decrease in value of the colonial currency should be decreed, as one is allowed to believe, the consequence would be considerable loss for all the heirs, when the sale price of a negro will be from one thousand to twenty-five hundred livres, while at present the same negro can be sold for twelve and even thirteen thousand livres; and all other values will be similarly and proportionally reduced. Therefore all the arguments presented in opposition to the sale of the property of the said succession have no more weight than the reasons presented to the contrary effect, as all are based on suppositions; that is, it may happen and it may not happen, hence there is nothing in the reasoning of the family meeting to show the necessity of a judicial lease; on the contrary, it is easy to prove that a solution of that kind would be prejudicial to the interests both of the minors and of the heirs of age, to the latter of whom, however, a judicial lease would be detrimental to a greater degree, considering that some of them have run into debt, which they cannot meet, if deprived of the property granted to them.

The petitioners beseech the Court to consider that six of the heirs are of age, and the remaining four, who are still minors, are of sufficient age to be emancipated. Therefore it should not be difficult to explain that it seems proper and expedient to make a division of the property that can be divided; and to dispose, by judicial sale, to the last and highest bidder, of the property that, by its nature, is not susceptible of division in kind. The petitioners also represent that they have two married sisters, each of whom had been given by their parents as an advance on their inheritance, one negress, which has to be accounted for at the time of the partition, in compliance with law.

All this considered, the petitioners pray that it may please Their Excellencies to disregard the deliberations of said family meeting and to order that all the property of the said estate which can be divided in kind, shall be partitioned among the heirs; and that which cannot be divided be disposed of by judicial sale to the last and highest bidder and the proceeds thereof divided among the heirs; and to direct also that the two negresses, donated to the petitioners' two married sisters, shall be brought back to the mass of the estate to be partitioned among the other heirs. And justice will be done.

New Orleans, February 5, 1763.

(Signed): A. Carriere; Joseph Carriere; J. Carriere.

(Translator's Note:—No explanation is given for the missing signatures of Louis Carriere and Mathurin Carriere.—G. L.)

February 5.

2 pp.

Petition to the Superior Council by Francois Cheval, as uncle and custodian of the minor Antoine Rousseau, asking for a family meeting to select a new tutor in lieu of Croiset, present tutor to said minor.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Francois Cheval, inhabitant of this colony, in the name and as maternal uncle and custodian of Antoine Rousseau, minor son of the late Antoine Rousseau and of the late Genevieve Cheval, representing:

That, since Sieur Croiset, inhabitant of Pointe Coupée, tutor and stepfather of said minor Antoine Rousseau, is ready to give an account of his management and administration of the successions of the said Antoine Rousseau and Genevieve Cheval, to Sieur Pierre Carmouche, as husband of Genevieve Rousseau, daughter and heiress, together with said minor Antoine Rousseau, her brother, of said successions, it would be proper, to that end, to appoint to said minor Antoine Rousseau another tutor, who might receive the share coming to the minor and invest it to the latter's best advantage; and also to take charge of the person of said minor.

Wherefore the petitioner prays that it may please Their Excellencies of the Superior Council to allow him, in his capacity

of maternal uncle of said minor, to summon a meeting of relatives and friends to select a new tutor and under-tutor, in Sieur Croiset's place, said meeting to be held before a Councillor, appointed Commissioner to that effect, and in the presence of the Procureur General of the King. And justice will be done.

New Orleans, February 5, 1763. (Signed): Cheval.

Permit granted for family meeting.

February 5, 1763.—Permit to convene a family meeting to deliberate on the subject matter of the above petition, before Lesassier. Order given in the Council-chamber on February 5, 1763.

(Signed): Kerlérec; Fremeur; Delachaise; Delaunay; Lesassier; Chantalou; Delalande.

February 5.

16 pp.

Order by the Superior Council that petition of Chancelier, of February 1st, be served upon Berqueville. Chancelier is acting as tutor to the minor children of Poiré called Chevalier.

Extract from the Records of the Sessions of the Superior Council of February 5, 1763:

Petition by Sieur Chancelier, in the name and as tutor of the minor children of the late Sieur Poiré, called Chevalier, in his lifetime warehouseman for the King in Illinois:

The Superior Council, considering the petition dated February first and presented this day by the petitioner, who represented that Sieur Berqueville, son-in-law of the said late Sr. Poiré called Chevalier, has summoned him before the Superior Council, etc. (Here follows a repetition of Chancellier's petition already presented above, under date of February 1, 1763.)

Having heard the conclusions of the Procureur General of the King, the Superior Council ordered and does order that the present petition be served on Sieur Berqueville, who shall answer at the next session of the council. Costs reserved.

Order given in the Council-chamber on February 5, 1763.

Received eighty livres. By the Council. (Signed): Broutin, Clerk.

Petition served on Berqueville.

Copy of the above order and petition served on February 15th by Lenormand, Sheriff of the Superior Council, on Sieur Berqueville, Infantry Officer, who is summoned before the Superior Council at the next ordinary session, on the first Saturday of the month of March, at eight o'clock in the morning, to answer the petition of Sieur Chancelier. (Signed): Lenormand.

February 7.

2 pp.

Petition to the Superior Council by the minor children of the late Joseph Carriere, asking for calling of a family meeting to decide upon their emancipation.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Noel Carriere, Mathurin Carriere and Francois Carriere, minor sons of the deceased Sieur Joseph Carriere, resident of this city, and of the late Madame Marguerite Trepanier, acting in their own name and also in behalf of Francoise Carriere, their minor sister, and setting forth:

That they have attained the age of twenty-four, twenty-two, and twenty years, respectively, and their aforesaid sister the age of fourteen years; and they wish to be emancipated, so that they might enjoy and use their rights, and dispose of their personal property and of the revenue from their immovable property.

This considered, the petitioners pray that it may please Their Excellencies of the Superior Council to direct that a family meeting of relatives and friends be called, before a Commissioner appointed in the case, to give their advice with reference to the subject set forth in the present petition, and to select a curator.

New Orleans, February 7, 1763.

(Signed): Noel Carriere; M't Carriere; Francois Carriere.

Consent of the Procureur General to emancipation above minors.

Upon the demand of the said minors, I consent, in the King's name, to the emancipation of the persons named in the aforesaid petition so that they may enjoy their income, and to the selection of a curator by the family meeting.

New Orleans, February 7, 1763. (Signed): Delalande.

February 7.

2 pp.

Petition to the Superior Council by Joseph Ducros, Attorney for Vacant Estates, for invalidation of the will of Francois Breton, merchant at Natchitoches, who had bequeathed all his holdings in the Colony to certain legatees, leaving out of consideration his wife and children in France.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Sieur Joseph Ducros, Attorney for Vacant Estates, alleging:

That he learned from several persons coming down from Natchitoches that Francois Breton, merchant of said Post, native of Bausset in Provence, had died one month ago; that said Breton has no heirs in the Colony, and the heirs that he might have in Europe seem to have been excluded from his succession, in consequence of a testament, passed before Sieur Pain, storekeeper at said Post, by which the deceased bequeathed all his holdings in this colony to several legatees, cutting off his wife and some children he left in France; that the petitioner does not know the tenor of said testament, and does not know whether the deceased has

appointed a testamentary executor; but, whatever the provisions of said will may be, the petitioner thinks that, in his abovestated capacity, he has the right to set himself against the validity of said testament: first, because the testator's wife might have some dotal claims to be paid first, according to the marriage contract and to the custom of the place where it was executed; secondly, because the testator, by entirely excluding his wife and children from his will, expressly disinherited them from an unknown and illegitimate cause, and such omission is utterly contrary to the spirit of the law, and therefore nullifies the will.

All these considerations, until complete knowledge of the marriage contract is at hand, are sufficient to hold in abeyance the execution of said testament; and besides, and in addition to the foregoing, it is proper to investigate whether the accident that caused the death of said Francois Breton may have so upset his mind and spirit as to cause him to forget his near relatives, and to be impressed only by the actual services rendered to him under such circumstances by the legatees, without recalling to his mind what he owed through natural ties.

For all these considerations, the petitioner prays that it may please Their Excellencies of the Superior Council to order the proceeds arising from the succession of the said Francois Breton to be turned over to him, in his stated capacity of Attorney for Vacant Estates, until the deceased's wife and children have established their claims; and consequently the testament be held in abeyance in regard to the legatees; and in the event the funds of the succession have already passed into the hands of the said legatees, the latter be requested to furnish a good and sufficient security.

New Orleans, February 7, 1763. (Signed): Ducros.

Superior Council orders Attorney for Vacant Estates to take cognizance of the holdings of above succession.

February 7, 1763.—Considering the present petition, having heard the conclusions of the Procureur General of the King, the Superior Council ordered and does order that Sieur Ducros, Attorney for Vacant Estates, take cognizance, in his said capacity, of all the movable and immovable property of the late Francois Bretton.

Given in the Council-chamber on February 7, 1763.

(Signed): Kerlérec; Lesassier; Fremeur; Delaunay; Delalande; Delachaise.

February 9.

1 p.

Delachaise, who is unable to attend family meeting, sends his advice on the matter of curator for the Carriere minors seeking emancipation.

To Sieur the Procureur General of the King: As I will not be able to attend the family meeting that is to be held at the Registry for the selection of a curator for the children of the late Sieur Carriere. My advice is that the deceased's eldest son be selected to act in said capacity.

New Orleans, February 9, 1763. (Signed): Delachaise.

February 9.

1 p.

Laveau, who is unable to attend family meeting, sends his advice on the matter of curator for the Carriere minors seeking emancipation.

To Sieur the Procureur General of the King: Being indisposed it will be impossible for me to take part in the selection of a curator for the Carriere minors. My advice is that the eldest of the deceased's sons of age, be appointed curator.

New Orleans, February 9, 1763. (Signed): Laveau.

February 10.

No. 8340. 3 pp.

Compromise between Madame De la Pommeraye and Joseph Dubois, who agreed to pay her 2000 livres, plus interest, as price of a negro who died in Dubois' service.

Before the Royal Notary of the Province of Louisiana, residing in New Orleans, in the presence of the undersigned witnesses, personally appeared Sieur Gabriel Joseph Dubois, Officer of the Militia, inhabitant of this city; and Dame Jeanne Catherine Loquet De la Pommeraye; who declared that by virtue of the order, of the 5th instant, of the Superior Council, condemning Sieur Dubois to pay to said Madame the value of a negro named Coffy, belonging to her, who died in the service of Sr. Dubois, said value to be determined by two arbitrators, these to be chosen by the two interested parties, they have reached the following agreement, in order to avoid all dissensions and to completely put an end to their lawsuit:

Sieur Dubois obligated and bound himself to pay to Madame De la Pommeraye, within five months from the present day, the sum of 2000 livres in French currency, together with interest on said amount, at the rate of five per cent, also in French currency; and he furnished security on all his property, present and future, movable and immovable, adopting, for this purpose, his domicile in this city, where all acts required for the execution of these presents shall be passed.

And Madame De la Pommeraye promised to acquit and fully release Sieur Dubois and not to ask him for anything else for costs or whatever other reason, besides the sum above specified. Executed in the Notarial Office of this city on February 10, 1763. Witnesses: Sieur Joseph Villars Dubreuil, Officer of the Militia in this city, and Sieur Marin Bary.

(Signed): J. Dubois; De la Pommeraye; Villars; Bary; Broutin, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

February 19.

1 p.

Certification by Songy that Chancelier refused to give Giraudeau and Berqueville any information on the Chevalier succession in Illinois, and stated that he would go to New Orleans only to resign as tutor.

I, the Undersigned, do certify that, while I was in Illinois during the month of July last, Messrs. de Giraudeau and Berqueville made a request on Sieur Chancelier about the situation and the affairs of the succession of the late Sieur Chevalier, and said Sr. Chancelier refused to give them any explanation saying that all the papers and documents relating to the said succession were in New Orleans; and that, after all, he had no account whatever to render to them; and, a few days before his departure, he told me positively he would not go down to New Orleans except for the purpose of resigning his tutorship. In testimony whereof I made the present statement to be of use in case of need.

New Orleans, February 19, 1763. (Signed): J. Songy.

February 20.

1 p.

Juan Cristoval Carta, from Campeche, transfers to Francisco Xavier de Acosta of New Orleans a power of attorney granted him by Joseph Manuel Martines, also of Campeche.

Substitution of Procuration: Juan Cristoval Carta, native of the Canary Islands, resident of the Port of Campeche, and a transient in New Orleans, transfers to Francisco Xavier de Acosta a power of attorney granted to him by Joseph Manuel Martines, also a resident of Campeche, executed before Santiago de los Rios, Notary Public, on November 13, 1762, empowering him to collect, from the estate of the late Diego Argus, a sum due for six cases of tallow, as appears from the invoice signed by Argus, the said tallow having belonged to said Joseph Manuel Martines. (Signed): Juan Cristoval Carta.

This document is written in Spanish.

February 28.

No. 8347. 5 pp.

Marriage Contract between Robert Dupré and Marie Jeanne Cavé.

Marriage Contract executed before the Royal Notary of the Province of Louisiana, residing in New Orleans, between Sieur Robert Dupré, inhabitatnt of Natchitoches, at present in this city, and native of Natchitoches, Dependency of New Orleans, Bishopric of Quebec, of age and enjoying his full rights, son of the late Jacques Dupré and of Marie; and Demoiselle Marie Jeanne

Cavé, native of this parish of St. Louis, bishopric of Quebec, minor daughter of Francois Cavé and of Marie Jeanne St. Jean; said Demoiselle being assisted by Madame Pesché.

Sieur Dupré assisted by Sr. Vincent Poirier and by Sr. Pierre Ancard, his friends, for want of relatives. Demoiselle Cavé assisted by said Dame Pesché; by Sr. Jean La Porte, inhabitant of this city; and by Sr. Louis Favet, sergeant of the colonial troops, her friends, for want of relatives.

Passed in the Notarial Office of this city, on February 28, 1763, in the afternoon, in the presence of Sieurs Marin Bary and Antoine Foucher, duly qualified witnesses.

(Signed): Marie Jeanne Cavé; Laporte; Hancart; Favet, sergeant; Foucher; Bary; Broutin, Notary.

Robert Dupré and Madame Pesché declared that they could neither write nor sign.

Donation in above marriage contract ordered recorded in the Registry of the Superior Council.

May 7, 1763.—Considering the donation set forth in the above marriage contract between Sr. Robert Dupré and Demoiselle Marie Jeanne Cavé, executed before Broutin, Notary, on February 28th last; and having heard the conclusions of the Procureur General of the King, The Superior Council ordered and does order that the said donation be recorded in the Registry of the Superior Council so that it may obtain its full and complete effect; and the order was immediately executed by the Clerk, on folio 85 of the Register of Insinuations. Given in the Council-chamber, on May 7, 1763. (Signed): Foucault.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

February 28.

No. 8348. 2 pp.

Contract between Pierre Voisin, tutor to the minor children of the late Nicolas Godefroy Barbin, and others, to repay certain sums which they owe to the Barbin minors.

This Day, February 28, 1763, in the afternoon, before the Royal Notary of the Province of Louisiana, residing in New Orleans, in the presence of the undersigned witnesses, and in the presence and with the consent of Mr. Delalande, Councillor of the Superior Council, acting Procureur General of the King, personally appeared Mr. Pierre Voisin, grandfather and tutor of the minor children of the late Sieur Nicolas Godefroy Barbin; Mr. Balthazar Ricard De Villier, lieutenant of the colonial troops, commandant of the Post of La Balize, cousin by marriage of said minors; and Mr. Voisin, Jr., captain of the colonial troops, commandant of Fort S'te Marie, maternal uncle of said minors; which appearers declared and acknowledged owing the said minors, namely:

Sieur Voisin, Sr., the sum of 11,823 livres and thirteen sols; Sieur De Villier, the sum of 10,000 livres; and Sieur Voisin, Jr., the sum of 10,000 livres: the whole in colonial currency on which they obligated themselves to pay the interest of five per cent, in compliance with the decree of the King.

The appearers also obligated themselves to pay back and restore to the said minors, when they will attain their full age, the said amounts; and in security they furnished a mortgage on all their property, movable and immovable, present and future. Passed in the presence of Mr. Jacob Corbain Bachemin, officer of the colonial troops, and Mr. Jonatas Darby, officer of the Militia, duly qualified witnesses.

(Signed): Voisin; P. Voisin; Ricard de Villier; Darby; Corbin Bachemin; Delalande; Broutin, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

March 1.

2 pp.

Petition of Chancelier, tutor of the Chevalier minors, for recovery of 4641 livres and proceeds of sale of a negress, from Couturier.

Petition to Monsieur Foucault, Commissioner, acting Intendant and acting First Judge of the Superior Council of the Province of Louisiana, by L. Chancelier, in the name and as tutor of the minor children of the late Sieur Chevalier, in his lifetime storekeeper for the King in Illinois, representing that Mr. Couturier, maternal uncle of the said minors, has three of them, whom he has supported, and expressed a desire to be reimbursed what is due him for their education and upkeep; and the petitioner requests a permit to have Sr. Couturier summoned before the Superior Council at its next session, so that he may present his accounts, and that judgment be rendered according to law; and, on his failure to appear, that he be condemned to repay the sum of 4641 livres which he received in advance, and to account for the proceeds of the sale of a negress belonging to the said minors, and which he sold because of her bad character, his receipt for said negress being hereto annexed.

New Orleans, March 1, 1763. (Signed): L. Chancellier.

Permit to cite.

March 1, 1763.—Permit to summon at the first session of the Council. New Orleans, March 1, 1763. (Signed): Foucault.

Citation served.

March 2, 1763.—March 2, 1763, by virtue of the above order, and upon request of L. Chancellier, notice was served by the Sheriff on Sr. Couturier, at his residence, to appear before the Superior Council

on the first Saturday of the present month, at nine o'clock in the morning, to answer the demands of the petition, and to submit to such judgment as will be rendered. Copy both of petition and of citation were delivered to Sr. Couturier. (Signed) : Lenormand.

March 1.

2 pp.

Petition of Chancelier, tutor of the Chevalier minors, for recovery of 3800 livres in silver piastres, Spanish currency, from Couturier; and for an account of the Dupont Le Kintrecque succession.

Petition to Monsieur Foucault, Commissioner, acting Intendant and acting First Judge of the Superior Council of the Province of Louisiana, by Louis Chancelier, in the name and as tutor of the minor children of the late Sieur Chevalier, in his lifetime storekeeper for the King in Illinois, representing that there is due to the estate in which his wards are interested the sum of 3800 livres in piastres gourdes, currency of Spain, by the minors' maternal grandfather, the late Sieur Dupont Le Kintrecque, inasmuch as a like sum was given by the late Sr. Chevalier to his father-in-law, as it appears from the promissory note herewith attached; that, the petitioner having made demand several times on Sieur Couturier, son-in-law of the late Sr. Dupont, for the return of said money, he answered that at the time of Sr. Dupont's death no piastres gourdes were found in the latter's residence, and besides the piastres gourdes were too highly priced to permit him to buy them in order to repay the succession; that Sieur Couturier, at the judicial sale held in the Dupont succession, had purchased the residence of the deceased, which residence constituted the security of the said minors, not only as creditors of the succession of their grandfather, but also as heirs representing their father.

Wherefore the petitioner asks to be allowed to have Sr. Couturier summoned before the Superior Council and that judgment be rendered condemning him to reimburse to the said Chevalier minors the said sum of 3800 livres in piastres gourdes, currency of Spain, at the rate of five livres per piastre; and also that judgment be rendered directing Sieur Couturier to deliver to the petitioner a statement concerning the Dupont succession and to settle with the petitioner whatever amount may be coming to the minors. And justice will be done.

New Orleans, March 1, 1763. (Signed) : Chancellier.

Permit to cite.

March 1, 1763.—Permit to summon Sr. Couturier to appear at the first session of the Superior Council. New Orleans, March 1, 1763. (Signed) : Foucault.

Citation served.

March 2, 1763.—Copy of petition and copy of order to appear before the Superior Council on the first Saturday of the present month were delivered

to Sieur Couturier, at his residence, by Marin Lenormand, Sheriff, by virtue of the above order and upon request of Sr. Chancellier, acting as tutor of the Chevalier minors.

New Orleans, March 2, 1762. (Signed): Lenormand.

March 3.

No. 8349. 4 pp.

Mortgage loan of funds of the minor children of the late Nicolas Adam called Blondin, by Francois Louis Briant, acting as their tutor, to Louis Antoine Andry.

Before the Royal Notary of the Province of Louisiana, residing in New Orleans, in the presence of the witnesses hereinafter mentioned and undersigned, personally appeared Sieur Francois Louis Briant, merchant of this city, in his capacity of tutor of the minor children of the late Sieur Nicolas Adam called Blondin, appearing with the consent and in the presence of Sieur Delalande, Councillor of the Superior Council and acting Procureur General of the King; which appearer stated that having some funds to invest, accruing from the succession of said Nicolas Adam and belonging to the said minors, he had decided to place the sum of 4714 livres and six sols in the hands of Sieur Louis Antoine Andry, a half-pay lieutenant and assistant engineer of this colony, who also appeared and acknowledged and confessed having received this day in cash from Sieur Briant, in colonial currency, the said sum of 4714 livres and six sols, which he promised to return and pay back to Sr. Briant, or to the said minors, or to whomever else it may concern, within one year from the present date, together with the interest at the rate of five per cent, in compliance with the ordinance of the King; in security whereof he granted a mortgage on all his property, movable and immovable, present and future, and adopted, for this purpose, his domicile at his residence in this city, where all acts required to carry out the present obligation will be executed.

Sieur Francois Langlois, inhabitatnt of this city, also appeared, and, after the reading of these presents, has voluntarily made himself guarantor in behalf of said Sr. Andry, for the said sum of 4714 livres and six sols, of principal and the interest thereon, offering mortgage on all his property, movable and immovable, present and future, and taking up, for this purpose, his domicile at his residence in this city.

Executed in the Notarial Office of this city on March 3, 1763, in the morning. Witnesses: Sieurs Pierre Marin Bary and Antoine Foucher.

(Signed): Foucher; Andry; Langlois; Briant; Bary; Delalande; Broutin, Notary.

Settlement of the above obligation.

March 29, 1768.—On March 29, 1768, in the afternoon, before the Royal Notary of the Province of Louisiana, residing in this city, appeared Sieur Francois Louis Briant, resident of this city, as tutor of the minor children of the late Sieur Nicolas Adam, who declared and confessed to have received from Sieur Louis Antoine Andry, engineer in this colony, the sum of 4714 livres and six sols, in colonial currency, together with the interest due up to the third of the present month, in reimbursement of an equal sum that Sieur Andry received from Sr. Briant, according to the loan contract of March 3, 1763. Consequently Sr. Andry is properly and lawfully acquitted by Sr. Briant, who promised to have him acquitted also towards and by whomsoever it may concern.

Passed in the Notarial Office of this city on the day, month and year above stated, in the presence of Sieurs Jean Soubie and Francois Gouvaix, duly qualified witnesses.

(Signed): Briant; Soubie; Andry; Garic, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

March 4.

3 pp.

Answer of Du Coder to Doriocourt, who brought suit for damages to his crops by the cattle of the former.

To Their Excellencies of the Superior Council of the Province of Louisiana: Answer that Sieur Du Coder, officer, makes to the demands of Sieur Doriocourt, also officer:

Your Excellencies: The suit brought by Sieur Doriocourt against Sieur Ducoder is without foundation. Sr. Doriocourt stated in his petition that the defendant had removed three arpents of fence and consequently he suffered a loss of thirty quarters of corn and ten quarters of beans. It is proper for the defendant to present to the Court the matter in its full light in order to show that the request of Sr. Doriocourt is unjustified. The fence in question starts from the levee and continues through the full depth of the property, as it is proved by the statements herewith annexed; therefore the defendant's cattle could not cross it and cause the alleged damages to the plaintiff's crops. It is easy for the defendant to give proof that the fence was taken away by the plaintiff, when the corn-stack and bean-stack were made, for the purpose of leaving the crops exposed to damage.

The plaintiff also arbitrarily sets his damages at a certain quantity of corn and beans, while it is the custom, in such cases, to inform the owner of the cattle which caused the damage and try to reach an amicable settlement of the matter by means of an expert who is able to appraise the damages; but Sr. Doriocourt did not care to follow such a course, showing that he was

moved by a feeling of spite. It is painful for the defendant to appear before the Council in a matter of such a trivial nature. The defendant has been in the service of His Majesty for thirty-four years, and he was never before summoned before Your Excellencies, this being the first time.

Another consideration is that the damage was caused on St. Martin's day (November 11th), which is the last day for the turning loose of cattle.

The defendant concludes that it may please Your Excellencies to order Sr. Doriocourt to prove that the fence in question belongs to him and to order him to put someone to watch his own cattle which are causing damage along the Royal Highway and the Levee, and which are forcing the defendant to incur heavy repair expense; to reject the plaintiff's demand and condemn him to costs. And you will do justice.

New Orleans, March 4, 1763. (Signed): Ducoder.

Document annexed to the above.

March 4, 1763.—I, the Undersigned, do certify to have worked on a fence on the land of the late Poivre, which land was sold to Messire Ducoder; in faith whereof I have signed. New Orleans, March 4, 1763. (Signed): Detreval.

Another annexed document.

December 23, 1762.—We, Barbay and Perilion, do certify that the fence between Monsieur Ducodere and Poivre was built along seven and three-fourths arpents to the property of Mr. La Grenade; in faith whereof we have signed the present statement on December 23, 1762. (Signed): Barbay, Jr.; Ordinary mark X of Perilion.

I, Pierre la Perrine, soldier of the company de la Tour, do certify that I have built for Mr. Poivre the fence that now belongs to Mr. du Codert, lieutenant. I have signed these presents under my ordinary mark. (Signed): Glapion; Ordinary mark X of Pierre La Perrine, soldier.

The document is in bad condition, being torn, partially destroyed, and the ink fading.

March 5.

3 pp.

Petition to the Superior Council by Jean Labranche to have a family of free negroes ordered to vacate four arpents of land which the petitioner claims belongs to him.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana: Jean Labranche humbly prays and represents that he made an exchange of four arpents of land, situated at L'ance-aux-outardes on the other side of the River, for four arpents of land facing the Cannes Bruslées, adjoining the property of Madame Piquery on one side and bordering, on the other side, upon the land formerly belonging to Sr. Chagneau, who, upon leaving the colony, on November 3, 1758,

granted his general procuration to Sieur Hardy called Lavierge, empowering him to sell twelve arpents of land, instead of eight, that he had bought from Madame Collet; that the petitioner allowed, or at least did not oppose, Sr. Chagneau the use of his four arpents above referred to, and specified in the act of exchange herewith annexed, and perhaps said Sr. Chagneau might have believed that the said four arpents of land belonged to him; that the said Sr. Lavierge, who held Chagneau's procuration, has really sold twelve arpents, instead of eight, to a family of free negroes, formerly belonging to Sr. Cazenave, which negroes thought they had the right to enjoy four arpents of land belonging to petitioner, who, having a large family, would like to settle his eldest son on said land; that it is probable that Sieur Perret sold to the late Collet eight arpents and that the widow Collet likewise sold only eight arpents to Chagneau.

All this considered, the petitioner prays that it may please Your Excellencies to render your decision and order that the said family of free negroes refrain from encroaching in any way upon petitioner's said four arpents of land, formerly belonging to Sr. Chagneau. And you will do justice.

New Orleans, March 5, 1763. (Signed): Foucault.

Permit to cite.

March 5, 1763.—Permit to have Hardy called Lavierge, Chagneau's manager, summoned before the Superior Council at its first session to answer the demands of the present petition.

New Orleans, March 5, 1763. (Signed): Foucault.

Citation served.

March 8, 1763.—On March 8, 1763, by virtue of the above order and on request of Sieur Jean La Branche, notice of summons was served by Marin Lenormand, Sheriff, upon Sieur Hardy called Lavierge, as manager of Sieur Chagneau, at his residence, to appear before the Superior Council on Saturday, April 6th, at nine o'clock in the morning, to answer the demands of the above petition and to hear judgment pronounced according to law. Copy of the order of the judge, and of the petition, and of the present citation were delivered to Sr. Hardy called Lavierge. (Signed): Lenormand.

March 5.

3 pp.

Decision of the Superior Council in the case of D'Auterive vs. St. Denis, for possession of slaves.

Extract from the minutes of the Superior Council of Louisiana: Session of March 5, 1763:

Between Sieur Bernard D'Auterive, Captain of a company of colonial troops, represented by Sieur Gilbert Maxent, merchant of this city, plaintiff; and Sieur Le Chevalier De St. Denis, Officer also of the colonial troops, defendant:

The Superior Council, having considered the petition presented by the plaintiff, the

order and citation dated 17th and 19th of July last, respectively; the said petition representing that petitioner had bought from the defendant a negro named Cezard and the latter's wife named Marie Anne, together with their three children, as it appears from the act of sale, executed under private signature, dated October 12, 1761, herewith annexed; that the defendant was to deliver the said slaves during the following month of December of the same year; that the plaintiff was unable to obtain the delivery of the said slaves notwithstanding repeated demands made to that effect; and concluding, that he be allowed to have the defendant summoned, the notice of citation to be served at the domicle of Monsieur the Procureur General of the King, to appear before the Superior Council at its first session to hear judgment directing him to deliver, without delay, to the plaintiff or to his attorney the slaves mentioned in the aforesaid act of sale, and in default to be condemned to pay for the use of the slaves and to be held responsible for the death of same until delivery. And to pay costs.

Having read the annexed act of sale under private signature referring to a negro, a negress and their three children, the said act being dated October 12, 1761, the Council has given and does give first default against the defendant for having failed to appear; consequently it ordered and does order that he shall be summoned again to appear at the first session within three months from this day. Costs reserved.

Given in the Council-chamber. New Orleans, March 5, 1763. By the Council. (Signed): Broutin, Clerk.

Citation served.

March 16, 1763.—On March 16th, by virtue of the above order, and upon request of Sieur Bernard Dauterive, Captain of a Company of colonial troops, represented by Sr. Gilbert Maxent, acting under Dauterive's procuration, Marin Lenormand, Sheriff of the Superior Council, delivered at the domicile of Monsieur De la Lande, Procureur General of the King, notice of citation on Mr. Le Chevalier de St. Denis, residing at Natchitoches, to appear at the first session of the Council, within three months from the date of the aforesaid order, to answer the demands of said petition. Copy of said order and of the present citation were delivered to the said Procureur General of the King. (Signed): Lenormand.

March 5.

1 p.

Petition to the Superior Council by Joseph Carriere, curator of his minor

Petition to Their Excellencies of the Superior Council of the Province of Louisiana by Joseph Carriere, as curator of his minor brothers, representing that Sieur Boré, formerly tutor of said minors, has in his possession certain funds arising from the first judicial sale of the movable property of the Carriere succession, as well as funds com-

brothers, to compel Boré, their former tutor to make an accounting of their property.

ing from the judicial sale of the plantation. Wherefore the petitioner prays that it may please Your Excellencies to order that said Sr. Boré render an account of all said funds, before Monsieur de Kernion, formerly appointed Commissioner in the case, the said accounting to take place within fifteen days, at the latest, so as not to delay any longer the partition among the heirs.

New Orleans, March 5, 1763. (Signed): Joseph Carriere.

March 7.

2 pp.

Petition to the Superior Council by Maxent, who seeks payment of a bill of exchange by De la Houssaye, Town-Major of New Orleans.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana:

Maxent, merchant of this city, humbly prays and represents that there was transferred to him by Sieur Grenier a bill of exchange for the sum 1132 livres, drawn by Mr. Philippe on July 25th last, and accepted by Monsieur Le Chavalier de la Houssaye for value received; that petitioner made demand for payment on said Sieur De la Houssaye, who replied that he was ready to pay provided he be discharged by the Council.

Consequently petitioner prays to be allowed to summon Mr. De la Houssaye before the Council at its next session and that judgment be rendered, condemning him to pay the sum set forth in the said bill of exchange, and releasing said Sr. Grenier. With costs.

New Orleans, March 7, 1763. (Signed): Maxent.

Permit to cite.

March 8, 1763.—Permit to summon at the first session of the Council. New Orleans, March 8, 1763. (Signed): Foucault.

Acknowledgment of summon.

(March 8, 1763).—I Consider myself summoned for the first day of the Court session. (Signed): Le Che'r De La Houssaye.

March 8.

No. 8350. 9 pp.

Approval of his father's will and acceptance of inheritance by Francois Le Doux.

This Day, March 8, 1763, before the Royal Notary of the Province of Louisiana, residing in New Orleans, appeared Monsieur Francois Le Doux, Captain of a company of the troops garrisoned in this colony, who, having produced a letter of Mr. Pierre Antoine Louis Thomas Coffin, his cousin, counsel, dated February 25, 1761, at the city of Herdin, in Artois, place of residence of said Mr. Coffin, who informed the said appearer that he had inherited from the late Monsieur Antoine Francois Denis Le Doux, his father, Treasurer of the Extra-

ordinaire Des Guerres in the said city, the sum of 20,000 livres, bequeathed to him by his father in the latter's will executed on September 25, 1760, before Messire Philippe Joseph Francois Petit, Royal Notary for the said province of Artois, with his office in the said city of Herdin, a copy whereof was forwarded to the appearer, this copy and the said letter being herewith annexed.

And the said appearer having stated that he had read and reread the said testament and understood it well, declared that he accepted it and considered himself duly notified of it and consented that same be executed according to its form and tenor, and that he renounced all other claims and pretensions against the succession of his late mother, as well as the annuity granted him by his maternal aunt, Demoiselle Hainaut, as it is explained in his father's will.

Done and passed in the Notarial Office of this city on the day, month and year stated above, in the presence of Sieurs Marin Bary and Antoine Foucher, competent witnesses, residing here, who signed together with said Sieur Le Doux and the Notary after the reading of these presents.

(Signed): Foucher; Bary; Le Doux; Broutin, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

March 9.

No. 8352. 3 pp.

Procuration by Jean Goyau to Gilbert Maxent for settlement of all his business affairs in the colony.

Before the Royal Notary of the Province of Louisiana residing in New Orleans, in the presence of the witnesses hereinbelow mentioned and undersigned, personally appeared Sieur Jean Goyau, merchant, at present in this city, who, by these presents, constituted and appointed as his general and special attorney Sieur Gilbert Maxent, to whom he granted full power and authority to administer, settle and conclude, in appearer's name and behalf, all business matters of whatsoever kind and nature that appearer may have in this colony; to pay and acquit all that is lawfully due by appearer and to secure discharges; to receive payment of whatever may be due to appearer on promissory notes, accounts receivable, obligations, or for whatsoever other cause, and to grant valid releases; to represent him in all matters and in all places, with full power to sell, pledge and transfer three hundred planks which are at Sieur Chantalou's house; and also eighty pieces of lumber, two hundred and fifty joists of different lengths, and twenty thousand shingles, the whole to be found at Sieur Flamand's house; also the stock of merchandise delivered by appearer to one called Duplessis, first officer of Sieur Bobé's schooner, which sailed for Vera Cruz; and also the merchandise that the appearer owns

in partnership with Sieur Boisdoré, merchant of the this city, the whole to such persons and at such prices, clauses and conditions that the constituted attorney will deem necessary and convenient; to receive the sale price in full or in part; and in case of default or refusal of payments by the debtors, to have them compelled thereto by all lawful means; to obtain judgments, sentences, seizures, executions and sales; to adopt domicile; to constitute one or more attorneys and to revoke them; to compromise, negotiate, pass and sign deeds, acts and contracts; and in general to do, in behalf and in the name of the appearer, all that circumstances may require, without making it necessary, for whatever causes or reasons, to grant more special power than that set forth in these presents, which shall be good and valid in general for whatever matters herein specified and unmentioned; the said appearer promising to accept as satisfactory and to approve and ratify all that will be executed by the said attorney, as he does approve and ratify it by these presents.

Executed in the Notarial Office of this city, on March 9, 1763, in the morning. Witnesses: Sieurs Marin Bary and Antoine Foucher.

(Signed): Foucher; Goyau; Bary; Broutin, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

March 10.

No. 8353. 20 pp.

Judgment rendered by Superior Council in suit of Antoine Olivier vs. Francois Braquier: Ordered that Braquier deliver to Olivier all funds in his custody for account of Corail; Olivier to give security pending Corail's return to colony.

Extract from the Minutes of the sessions of the Superior Council of the Province of Louisiana: Session of February 5, 1763:

Between Sieur Antoine Olivier, merchant of this city, plaintiff; and Sieur Francois Braquier, Officer of the Militia and merchant of this city, acting in the name and behalf of Sieur Corail, absent from this colony, defendant.

The Superior Council, having considered the petition presented by the Plaintiff, the order and citation of the first day of the present month, said petition representing that by virtue of the annexed act of partnership, executed before Chantalou, Royal Notary, on March 20, 1762, the plaintiff transferred to Sieur Jean Jacques Corail one-half interest in the brigantine "Le Franc Macon" together with her rigging, sails, yards, utensils, arms and ammunition, under the expressed agreement that they would equip and fit her out, as they did, at common expense and in equal amounts, for the purpose of sending her under the command of the said Sieur Corail, where they would deem convenient, and of dividing, upon her return, the profits or the losses, as it is set forth in detail in the aforesaid Act of Partnership, and as it appears from the annexed statement of expenses dated March 21, 1762;

That the plaintiff has given to Sr. Corail a sum of 13,475 livres, 18 sols and one denier, in letters of exchange, for his half share of the cargo that was expected to be made for account of the said partnership at the first most convenient and advantageous place; of which sum, the amount of 12,775 livres, 18 sols and one denier is shown in Sr. Corail's receipt, here annexed, of the 22nd of the said month of March; and the amount of 700 livres, represented by a letter of exchange drawn upon the Commissaries of Stores, inadvertently omitted in said receipt, which gives a total sum of 53,903 livres, 12 sols and 4 deniers, considering the price of three hundred per cent paid for the said letters of exchange;

That the plaintiff believed he could congratulate himself upon the good choice he had made of a partner in the person of Sr. Corail, being convinced that his interests could not be entrusted in better hands than those of his compatriot, whom he had sheltered, fed and supplied with clean linen gratuitously, and whom he had treated with all the solicitude and cordiality that one can expect from a true and sincere friend, from the day of Sr. Corail's arrival in this city until his departure; but that surely the said plaintiff was mistaken, for, while he was showing all such attentions to his partner, the latter was already planning certain schemes detrimental to the plaintiff's interests. In fact Sieur Corail owned here a brigantine named "L'Immaculée Conception", which he left, when he departed, to the care and keeping of the plaintiff, while said Sr. Corail delivered clandestinely all his papers, and in particular his procuration, to the defendant for the purpose of selling his vessel, after his departure, and the proceeds whereof to remain in his attorney's hands, as it was really carried out. Such a bad way of dealing was a surprise to the plaintiff, who entertained suspicions, which he would have considered unjustified under other circumstances. Consequently he presented his petition on April 7, 1762, and on the following day, April 8th, he obtained a sentence by virtue of which he was able to sequestrate in the defendant's hands the proceeds coming from the sale of the said brigantine "L'Immaculée Conception", according to the return of Lenormand, Sheriff, the whole being herewith annexed. Sieur Corail, having been captured by the British, together with the aforesaid brigantine "Le Franc Macon", was taken to Havana, where he was often met by Mr. Boisseau; and during the several conversations they had together, Sr. Corail spoke to Mr. Boisseau of the letters of exchange that were in his possession, which the British let him keep, and stated his intention to send them to France, but never made any mention of the partnership he had contracted in this city. Such must really have been his purpose, since, in spite of the favorable occasion offered him by the meeting with Mr. Boisseau, he never wrote nor sent any message to the plaintiff;

That, since the partnership has come to an end, following the capture of the brigantine "Le Franc Macon", and since, con-

sequently, it is unjust that Sr. Corail should enjoy the property of another and dispose of same within his discretion, the plaintiff concluded that he be allowed to have the defendant summoned before the Court, at its first session, to be directed to deliver immediately to the plaintiff, in his aforesaid capacity and as a mortgage and privileged creditor, all the funds, belonging to Sr. Corail, that might be in his possession, which funds the plaintiff shall hold as a pledge until Sr. Corail's return to this colony, and until reimbursement by Sr. Corail of the aforesaid sum of 53,903 livres, 12 sols and 4 deniers, corresponding to the amount of 13,475 livres, 18 sols and one denier, received by Sr. Corail in letters of exchange, purchased at the rate of three hundred per cent; and also the amount of several drafts paid by the plaintiff for Sr. Corail's account. And that the defendant also be directed to pay costs and expense.

The council, having perused the said Act of Partnership, passed before Chantalou, Notary, on March 20, 1762; the statement, drafted in duplicate copy by the two parties on March 21, 1762, concerning the fitting out and equipment of the brigantine "Le Franc Macon"; another statement relating to the letters of exchange delivered by the plaintiff to Sr. Corail, according to the latter's receipt, at its bottom, dated March 22, 1762; the petition presented on April 7th last by the plaintiff to Monsieur De Rochemore; the order of April 8th last of Monsieur De Rochemore, at the bottom of said petition, allowing the plaintiff to sequestrate, in the defendant's hands, the proceeds of the sale of the brigantine "L'Immaculée Conception"; the sequestration and order executed in the defendant's hands by Marin Lenormand, Sheriff, according to his return of April 10th last; the defenses presented, this day, in writing by the defendant; the parties having been heard at the present session together with the conclusions of the Procureur General of the King;

The Superior Council condemned and does condemn the defendant to deliver to the plaintiff all the funds belonging to Sieur Corail that might be in his care and trust, which funds will be left in the possession of the plaintiff, who shall furnish a valid and sufficient security, and who shall give an account of same to said Sieur Corail, upon the latter's return to this colony. Costs reserved.

Decision rendered in the Council-chamber at New Orleans on February 5, 1763. By the Council. (Signed): Broutin, Clerk.

Received one hundred livres. (Paraphed.)

Order of the Superior Council served on Braquier.

February 15, 1763.—On February 15, 1763, by virtue of the above order and upon Sieur Antoine Olivier's request, Marin Lenormand, Sheriff of the Superior Council, served copy of said order on Sieur Braquier, acting for Sieur Corail, as well as a copy of the present notice. (Signed): Lenormand.

Braquier complies with order of the Superior Council and delivers the Corail funds in his possession to Olivier, who furnished bond as directed.

March 10, 1763.—On March 10, 1763, in the afternoon, before the Royal Notary of the Province of Louisiana, residing in New Orleans, personally appeared Sieur Francois Braquier, merchant of this city, who declared it was his intention to comply with the order rendered on February 5th last by the Superior Council, directing him to deliver all the funds in his possession, belonging to Sieur Corail, to Sr. Antoine Olivier, merchant of this city, who also appeared and acknowledged to have received today in cash, in colonial currency, from said Sr. Braquier the sum of 62,917 livres and seven sols, according to the statement presented, and certified as true, by said Sr. Braquier this day, and herewith annexed; moveover Sieur Olivier declared to have likewise received from Sr. Braquier a promissory note issued by Mr. Chabert, Infantry Captain, in behalf of Sieur Corail for the sum of 10,000 livres, in hides of sound quality, at the rate of ten livres per pound, for value received from Sr. Corail in the form of five hogsheads of Madeira wine delivered on March 19th last; for which sum Sieur Olivier acquitted and discharged Sieur Braquier and promised to have him acquitted and discharged also towards Sieur Corail and towards whomsoever else it may concern. In order to comply with the aforesaid decision of the Council, Sieur Olivier presented, as his guarantor, Sieur Francois Héry called Duplanty, a resident of this city, who also appeared and voluntarily offered himself as security for Sr. Olivier, in reference to the two amounts hereinabove specified, of which Sr. Olivier shall render an account to Sr. Corail upon the latter's return to this colony. Both Sr. Olivier and Sr. Duplanty offered security solidarily on all their property, movable and immovable, present and future, adopting, for this purpose, their domicile in this city, where they agreed that all acts necessary for the execution of these presents, be passed and served.

Done in the Notarial Offie of this city, on the day, month and year above stated, in the presence of Sieurs Marin Pierre Bary and Antoine Foucher, competent witnesses.

(Signed): A. Olivier; F. Héry; Foucher; Braquier; Bary; Broutin, Notary.

Annexed statement by Braquier, for funds belonging to Corail.

March 10, 1763.—Statement of divers effects that Mr. Corail has left to me according to receipt that I gave him, viz:

March 22: in colonial currency: ..... 2010– – – livres

The brigantine "La Concession" ("L'Immaculée Conception"), that I sold to Sieurs Olivier and Moulin, according to act executed at the registry:.....66000– – – do.

238 planks sold to same Sieurs:	1190– – –	do.
One barrel of tar, as above:	60– – –	do.
14 barrels of tar, sold to Sieur Caminada for:	845– – –	do.
The amount that I received from Sr. Olivier on his note of March 22, 1752:	2834– 6 –	do.
Total	72939– 6 –	do.

To be deducted:

My commission at 5%:	3646– 19	
For diminution in price allowed to Sieurs Olivier and Moulin, for sails, cordage, etc., that were missing at the inventory of said brigantine:	6100– –	
For the note of Sr. Corail, order of La Bastide:	275– –	
	10021–19	do.
Net sum of	62917– 7 –	do.

coming to Sieur Corail from the above statement of accounts, errors excepted, sixty-two thousand nine hundred and seventeen livres and seven sols.

At New Orleans, March 10, 1763.

Certified the present statement is true. (Signed): Braquier.

(Translator's Note:—All other documents referred to as annexed are missing.—G. L.)

March 14.

No. 8354. 4 pp.

Procuration by Francois Le Doux to Isaac Monsanto, to accept from his sister, in France, the legacy left him by his father.

Before the Royal Notary of the Province of Louisiana, residing in New Orleans, personally appeared Monsieur Francois Le Doux, Captain of the colonial troops garrisoned in this city, who, by these presents, appointed and constituted as his general and special attorney, Sieur Isaac Monsanto, merchant of this city, to whom he granted full power and authority to act in appearer's name and stead and to receive from Demoiselle Marie Francoise Le Doux, appearer's sister, residing in Herdin, province of Artois, the sum of 20,000 livres, that had been bequeathed to him by the late Messire Antoine Francois Denis Le Doux, his father, former Treasurer of the Extraordinaires des Guerres in the jurisdiction of the said city, according to his testament executed before Master Philippe Joseph Francois Petit, Royal Notary of the said province of Artois, on September 20, 1760; the said appearer stated that, by these presents, he subrogated, in his lieu and place, the said

Sieur Monsanto and conveyed, transferred and abandoned to him all his claims, rights, titles, reasons, actions, privileges and mortgages, so that the said constituted attorney might lawfully receive the said sum, or to dispose of same as though it belonged to him, the appearer having acknowledged to have received from his attorney the amount of said sum, which was paid him in this colony, and which said attorney will receive, or empower someone else to receive, and will grant valid releases, to be considered as granted by the appearer himself; and in case of default or refusal of payment of said sum by the said Demoiselle Le Doux, said attorney shall have power to compel her thereto by all lawful means, to obtain judgments, sentences, seizures, executions and sales; to compromise, negotiate, pass and sign deeds, acts and contracts; to sue and be sued, to oppose, to appeal, to adopt domicile, to issue powers of attorney and to revoke them; and in general to do in appearer's name and stead all that circumstances might require, without making it necessary, for whatever cause or reason, to confer upon said attorney a more special power than the one set forth in these presents, which shall be good and valid, until express revocation, for all matters herein specified and for all unmentioned matters likewise; appearer promising to hold as satisfactory and to approve and ratify all that will be done by the said attorney.

Passed in the Notarial Office of this city on March 14, 1763, in the morning, in the presence of Sieurs Marin Bary and Antoine Foucher, duly qualified witnesses.

(Signed): Le Doux; Bary; Foucher; Broutin, Notary.

Procuration by Isaac Monsanto substituting Milhet in his stead as attorney for Le Doux.

July 9, 1763.—Before the Counsellor and Royal Notary of the Province of Louisiana, residing in New Orleans, in the presence of the two witnesses hereinbelow named and undersigned, personally appeared Sieur Isaac Monsanto, merchant, residing in this city, in the name and acting under procuration of Messire Francois Le Doux, Captain of the troops garrisoned in this colony, by virtue of an act passed on March 14, 1763, before Master Broutin, former Notary in this city; which appearer, finding himself unable to attend to the transactions set forth in said act of procuration, has declared to have this day substituted, in his lieu, the person of Sieur Milhet, merchant of this city, who is ready to leave for France, to whom he transferred all the power and authority specified in said procuration, without reservation and with all such and like power as was given to appearer by said Sieur Le Doux, who is presently absent from the city in the King's service, so that the said substituted and constituted attorney may act in all circumstances as appearer would be able to act if he were present; which appearer promised to approve and ratify all that will be executed by said Sieur Milhet, by virtue of these presents.

Done and passed in the Notarial Office of this city, on July 9, 1763, before noon. Witnesses: Sieurs Pierre Marin Bary and Pierre Gauvain.

(Signed): Monsanto et Co.; Gauvain, Jr.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

March 16.

6 pp.

Petition to the Superior Council by Mr. Populus, Captain of Infantry, seeking permit to remove from Mobile to New Orleans, and asking rejection of his wife's opposition to the sale of all their holdings around Mobile and in Tensas. Petition was prompted by the impending cession of Mobile to England. Petitioner seems to believe that New Orleans and surrounding territory will remain to France, although he considers the possibility of its cession to Spain; and in either case he thinks it better for him to settle in New Orleans.

Petition to Their Excellencies of the Superior Council of the Province of Louisiana, in New Orleans:

Your Excellencies: I have the honor to represent that Madame Populus, my wife, left for New Orleans on board the King's schooner, which sailed from Mobile on the 16th of the present month, for the purpose of filing a complaint in Court and of proceeding against me according to the petition presented by her, before sailing, to Monsieur Fazende, Judge at this place; that to said petition I gave my answer, which was served on her at the moment of her departure, as it was not possible to do it sooner, because said Madame decided suddenly to leave, with the evident object of avoiding my opposition to all her demands; and I beg Your Excellencies to consider the reasons that I am going to present here.

I have not concealed the fact of my change of garrison to the city of New Orleans, as I was unwilling to remain at this garrison of Mobile, for the reasons explained in my petition of March 12, 1763, which I addressed to Monsieur de la Lande, with a request that he present it to Your Excellencies of the Superior Council, so that I may be able to carry out peacefully my plan of settlement.

Since then the repeated news of the retrocession of this colony to the foreigners affords me more reason than ever to renew my former sentiments, as I cannot bring myself to live in a religion so odd as that of the English, as it is contrary to the nature and the law of the Kingdom, and even if we believe that the British will tolerate our religion, I will never accept any yoke other than my country's either in this country, if the French are preserved here, or elsewhere, if such should be the case.

You will consider, Your Excellencies, after having been thirty-six years in this colony, always in the military service, and after having grown old in harness, how grievous it will be for me, if my Prince maintains his troops either here or elsewhere to quit the

service without the military emoluments, which I expect to receive, and consequently to be forced to live under the foreign domination and thereby lose everything.

And since the River St. Louis, or Mississippi, as well as New Orleans have been firmly settled by the French, as everybody knows, it is more advantageous that I establish my settlement on this River in order to make safe and sure the property of Madame my wife and the slight hope that my children may have upon it, and not remain in the vicinity of Mobile, where no landed property can be established, especially now, for the reasons that I am about to explain, and which I beg Your Excellencies to consider.

Who can predict what will follow when the foreigner has set his foot on this soil; who could answer for the savages who make raids on our cattle, even now when the French are in the country? During these last five years the savages have killed twenty-five head of my cattle, and five head of cattle during the last winter; therefore Your Excellencies can judge what may happen when citizens of two different nations will be here; while the British, eager to dominate, will perhaps put their savages in a way to make us endure their insolence, and perhaps worse things. Moreover it would not be convenient for me to take up my domicile in a place like Mobile, considering that it is impossible that a friendly feeling will exist under the English yoke.

I consider also the eventuality that the Spaniards may occupy New Orleans and the southern part of the Mississippi or St. Louis River. There is no doubt that this yoke cannot be as hard for us as that of the British, in view of the understanding recently reached between the Courts of France and Spain. It can therefore be also presumed, without stretching the imagination, that the Frenchmen established on the Mississippi and in New Orleans will have a much better outlet for their products, provisions and workmanship, because the Spaniards will find themselves compelled to make use of the help and assistance of the Frenchmen, as it always happened in this colony since since its establishment, inasmuch as the Spaniards do not like to cultivate the soil or to do any other form of hard work.

Therefore, Your Excellencies, I am not running any risk by asking to be allowed to settle on the Mississippi with a few negroes, negresses, etc., that we, Madame Populus and myself, have; as I find this plan much more advantageous than that of remaining at Mobile, considering the reasons hereinabove explained and which I shall not retract, as I find them most reasonable and just for the security and tranquillity of our property and that of our children, should they ever acquire any.

In the event that I should be forced to leave this colony for a time, the property that we may possess will always be safer on the St. Louis River than elsewhere; according to the

very recent treaty with England, we are forced to remain under the yoke of the British or to move out; and if we sell whatever property we may have, it is quite evident that the said nation will fix a very low price; they will impose upon us such a hard rule as to compel us to leave, with their intention of getting at a small price whatever we may own.

We have to seek the best course to follow, and such is certainly the one I have set forth in this petition, and I can attain it only by selling the small holdings which we possess around Mobile, namely, some poor houses and lands; and besides a poor plantation, that we own in Tensas, of bad lands, on which the best that can be found are some one hundred horned cattle, together with several horses and mares, some of which I am about to sell.

Whereupon I request, Your Excellencies, the rejection of all opposition that Madame Populus might raise, considering the circumstances of the time; and the reasons presented in this petition show that my only purpose is to make safe the little property that we possess. I have in mind also that if I should be obliged to go to France or elsewhere for some time to continue my service, and my wife should not be willing to follow me, she would be able to live with the little revenue of her property, until it will please God to bring me back to this colony.

The considerable expense that I shall meet for my transfer from Mobile to New Orleans, urges me to sell most of my cattle, considering that the expense would be excessive, should I be compelled to move them all, as it would require at least two boats to move all my slaves, my family and all the baggage.

You will consider, Your Excellencies, all my reasons, as you are just and equitable. And you will do justice.

At Mobile, March 16, 1763. (Signed): Populus, senior.

A true copy from the minutes deposited in the Registry of this place by Mr. Populus. At Mobile, April 18, 1763. (Signed): Roujot, Clerk.

(Translator's Note:—The document is in a perfect state of preservation and the writing legible and clear; but the text is full of errors, and the meaning in certain places is so vague that the translator has difficulty in interpreting the text.—G.L.)

March 19.

No. 8356. 2 pp.

Sale of land by Bertrand Guichanduc to Jean Baptiste Lacour.

Before the Notary of Pointe Coupée, and in the presence of the undersigned witnesses, personally appeared Sieur Bertrand Guichanduc, Surgeon of the King at this Post, who voluntarily acknowledged and declared that he conveyed, transferred and abandoned, with warranty against all troubles, debts and mortgages, donations, marriage settlements, substitutions and all other

impediments whatsoever to Sieur Jean Baptiste Lacour, inhabitant of this Post, who also appeared and signified his acceptance in his own behalf and in behalf of his heirs and assigns, a parcel of land measuring two arpents and twenty-six feet front by the usual depth, with no buildings, pens or fences thereon, the whole as it stands, with which the said purchaser stated that he was well acquainted as he had seen and visited the place, and was satisfied and pleased with it; the said land adjoining on one side the buyer's property and on the other side the property of Madame the widow of the late Joseph Chatellerau. The said Jean Baptiste Lacour, by virtue of these presents, shall own and enjoy said land and may dispose of same as his own property. The said land came into possession of the vendor by purchase that he made from Simon Lacour and the latter's wife, by act executed before the undersignd Notary. The present sale is made for the price of 4000 livres, that said buyer promised and does promise to pay to the vendor, or to the bearer of these presents, during the next month of April, in currency which, at that time, will be accepted as legal tender in this colony, giving security on all his property, movable and immovable, present and future.

Done and passed at the aforesaid Post of Pointe Coupée, on March 19, 1763, in the morning, in the presence of Sieurs Pierre Ricard and Em Roujeot, competent witnesses.

(Signed): Bn. Guichanduc; J. B. Lacour; Roujot; Ricard; Benoist, Notary.

(Signed, in margin of first page): Devergés; De Reggio; Ducros.

March 21.

5 pp.

Copy of an act of procuration by Emanuel Weis and Nicolas Weis, merchants of La Rochelle, to Pierre Cyprien Poupet, merchant of same city.

Before the undersigned Councillors of the King and Notaries at La Rochelle, appeared Sieurs Emanuel and Nicolas Weis, merchants and partners residing in this city, on Rue de la Porte Neuve (New Gate Street), parish of St. Barthelemy, said Sieur Emanuel Weis, one of the partners, appearing for both. Which appearers made and constituted as their general and special attorney, Sieur Pierre Cyprien Poupet, merchant of this city, who is about to leave for the colony of Louisiana, to whom the said appearers granted power to receive, in their behalf and name, from Sieur Francois Caminada, merchant of New Orleans, or from his widow, his heirs or other representatives, the proceeds from the merchandise and effects sent and addressed by the said appearers to said Sieur Caminada, according to bills, invoices, vouchers and documents that they will deliver to the said constituted attorney, who shall secure a settlement of accounts, either in an amicable way or at law, and shall receive the balance due of what

has been sold as well as the effects not disposed of, giving receipts and releases; the constituted attorney is empowered to sell all the merchandise and effects, that might be delivered to him in kind, to the best advantage of the appearers; and in case of default, or refusal, or delay of payment by debtors, depositaries and agents to compel them thereto by all lawful means, and, to this end, to take up domicile, to constitute or substitute one or more attorneys and to revoke their power; to negotiate, compromise and transact under the clauses and conditions that he may deem convenient; to pass and sign deeds, acts and contracts; to make statement relative to his journey, sojourn and return voyage; to take all oaths that might be required; and in general to do and act as appearers themselves could and would do and act, if they were present; said appearers obligating themselves to accept as satisfactory all that will be executed by him.

Done and passed at La Rochelle and in the Notarial Office on March 21, 1763, in the morning.

(Signed): Emanuel & Ns. Weis; Fredureux Dumas; Tardy.

Colated at La Rochelle, on March 22, 1763. Received twelve sols six deniers. (Signed): Drouhes.

Seal affixed on same day. (Paraph and seal.)

Legalization of above act of procuration.

March 22, 1763.—I, Pierre Estienne Lazare Griffon, Ecuyer Seigneur de Romagné et des Mothez, Councillor of the King and his General Lieutenant in and for the Seneschal's jurisdiction and Presidial Seat of the City of La Rochelle, certify, for all to whom it may concern, that Messrs. Fredureaux Dumas and Tardy, who have received the foregoing procuration, are Councillors of the King, Notaries in this city, and that the signatures affixed to the said act by them are their true signatures, to which credit must be given, as well as to the acts daily executed by them; in testimony whereof I have delivered these presents.

Done at La Rochelle on March 22, 1763. (Signed): Griffon.

Statement annexed to the above act of procuration.

March 20, 1763.—Monsieur Francois Caminada at New Orleans, account current with Emanuel & N. Weis at La Rochelle:

1755, October 16: for six bolts of Bretagne linen cloth shipped by us, which he kept for his account, according to his letter of October 16, 1755: Livres: .....4954 – –

March, 1763: for interest on the above sum from October 1755 to March 1763, making a total of 7 years and seven months, at the rate of 6% per annum: Livres: .....2254 – –

In his letter of October 25, 1755, and in the one of October 1, 1758, he states to have received from Mr. Prevost, in New Orleans, 250 pounds of Indigo in kind, and that he expects to receive another delivery of equal amount, for the account of Sieurs Weis, making a total of 500 pounds of Indigo of good and marketable quality.

Total.....7208 – –

1755, May 31: for net proceeds of a hogshead of Indigo, according to account sales: Livres:.....2108– 19 –

March 1763: for interest due on the above amount from May 31, 1755 to March 1763: making a total of 6 years and 10 months, at the rate of 6% per annum: Livres:..... 864– 14 –

Due to Sieurs Emanuel and Nicolas Weis in settlement of account, in currency of France: Livres:.....4234– 7 –

Total.....7208– – –

Errors and omissions excepted, the present statement shows that there is due to Sieurs Emanuel and Nicolas Weis of La Rochelle, in full for all demands, the sum of 4234 livres and 7 sols, in money of France; and furthermore, five hundred pounds of Indigo, of good quality, delivered to him (Caminada) by Sr. Prevost.

At La Rochelle, March 20, 1763. (Signed): Emanuel & N. Weis.

March 27.

No. 8358. 2 pp.

Testament of Anne Galbrun, widow of the late Barthelemy Dubic.

This Day, March 27, 1763, at five o'clock in the afternoon, on request of Anne Galbrun, widow of the late Barthelemy Dubic, living at the Convent of the Ursuline Nuns in New Orleans, where she works as yard-woman, the Royal Notary of the Province of Louisiana, residing in this city, repaired to the residence of the said Ursuline Nuns, and there he found in a room of said Convent, the said Galbrun confined to her bed, and she appeared to him, as well as to Reverend Father Karret of the Company of Jesus, to be ill in body but sound in mind, memory and understanding; and she declared that, being afraid that death might take her by surprise, the hour of its call being unknown, she wished to set her temporal affairs in order; and having recommended her soul to Almighty God, Father, Son and Holy Ghost and to the Most Holy Virgin Mary and to Saint Anne,

her good patron Saint, whom she prayed to intercede for her with His Divine Majesty so that her soul, when separated from her body, may be received among Christian believers, she always having practiced the Catholic Apostolic and Roman Religion, she declared and dictated, by word of mouth, that she is under every obligation to the said Ursuline Nuns for the good care they had taken of her for about fifteen years, during which time she lived with them, both in good health and in sickness, and for the many attentions that they still show her, so that she was sorry not to be in a position to acknowledge all their goodness;

And, being afraid that her relatives or heirs might trouble the said Ursuline Nuns, in the belief that she had any personal belongings at the Convent, she declared and dictated, by word of mouth, that she has no personal property, movable or immovable; that the little she possessed was used for her own maintenance during her lifetime; that at present there is nothing left but a little wearing apparel, and she prays the orphan girls to accept them and recommend herself to them for some prayers for the repose of her soul.

And this was all that she had to declare, and it represented her last will and testament, which was read and reread to her, and she declared that she heard and understood it well.

Executed at the residence of the said Ursuline Nuns, on said day, month and year.

The testatrix stated that she could hardly write and did not feel strong enough to sign; and she asked the Notary to sign these presents together with Reverend Father Caret, chaplain of said Convent.

(Signed): Franc Carette, Jes. Almoner; Broutin, Notary.
(Signed, in margin of first page): Devergés; De Reggio; Ducros.

(To be continued.)

INDEX TO THE SPANISH JUDICIAL RECORDS OF LOUISIANA
LXX.

August, 1784.

(Continued from April, 1941, Quarterly)

By LAURA L. PORTEOUS
(With Marginal Notes by Walter Prichard)

Spanish officials appearing in this installment:

Esteban Miro, Colonel of the Fixed Regiment of Infantry of this Place and Governor ad interim of the Province of Louisiana.

Martin Navarro, Intendant General of the Province of Louisiana.

Juan Ventura Morales, Accountant for the Branch for the Friendship of the People with the Indians, Acting Accountant of the Army and Royal Treasury of this Province, and Acting Intendant General (1785).

Juan Doroteo del Postigo y Balderrama, Auditor of War and Assessor General of Louisiana.

Alcaldes: Juan Esteban (Jean Etienne) Boré; Juan Renato (Jean René) Huchet de Kernion (1785); Francisco Maria de Reggio.

Escribanos: Fernando Rodriguez; Rafael Perdomo.

Public Appraisers: Josef Adrian de la Place; Guillermo Guignan.

Attorneys: Pedro Bertonière; Francisco Broutin; Antonio Mendez.

Juan Josef Duforest, Public Interpreter and Translator.

Josef de Villavaso, Administrator General of the Army and Royal Treasury.

Luis Lioteau, Judicial Accountant and Official Taxer of Costs of Court.

Nicolas Fromentin, Deputy Sheriff.

Joseph Foucher, Principal Treasurer of the Army and Navy for the Province of Louisiana.

Esteban Quiñones, Ecclesiastical Notary.

August 6, 1784.

Criminal Prosecution of one named Smith for robbery.

No. 3295. 7 pp.

Court of Governor Esteban Miro.

Assessor, Juan del Postigo.

Escribano, Fernando Rodriguez.

This case, involving theft of wearing apparel from a house in New Orleans, affords a good illustration of the procedure in investigation of the details of such a case and the sentences meted out to the culprits.

In the city of New Orleans, August 6, 1784, Esteban Miro, Colonel of the Regiment of Infantry of this Place and Governor, ad interim, of the Province of Louisiana, declared that now at what must be about ten o'clock in the morning, he has been notified that an Englishman, named Smith, had robbed a Spanish countryman of several pieces of clothing that have since been found. Therefore His Lordship has ordered the said Smith held provisionally, for which purpose he drew up this act to begin the process. Witnesses who have any knowledge of the crime must be called for examination, and Juan Josef Duforest, General Interpreter for this Province for English, notified so that he may be present at the taking of the declarations and for any other proceedings that may require his presence. For this is His Lordship's decree, thus he has ordered and signed.

Immediately afterward His Lordship caused Guillermo Campbell to appear, who through Juan Josef Duforest, General Interpreter, and before the Escribano, took oath by God, Our Lord, on the Bible, because he is a Protestant, under charge of which he promised to speak the truth, and being examined upon the tenor of the decree that begins this proceeding, he said: The day before, at about 11 o'clock, an Englishman, named Smith, arrived at his house and sold him a blue cloth cloak with gold braid on the collar, a short, white-striped linen coat, two small vests of the same material, and one pair of long trousers that seem to be made of printed calico. He bought the cloak for 5 pesos and the other things for 2 pesos, and paid 2½ pesos on account. He had never known Smith before, and this was the second time he had seen him. The witness asked the accused where he had obtained the clothes, and he answered that they had belonged to a friend who had died and left them to him. William Campbell says this is the truth, under charge of the oath he has taken, that he is 26 years of age, and he signed with His Lordship. (Signed) Miro; William Campbell; Juan Josef Duforest; before Fernando Rodriguez, Clerk of the Court.

The second witness is an Irishman, Miguel Gordan, who appeared and through the Interpreter took oath by God and the Cross, according to law, under charge of which he promised to speak the truth, and when examined upon the decree that begins

this proceeding he said: The day before he bought from the said Smith two pairs of short trousers, one white, the other striped, for 3 pesos, but has not paid for them. This is the truth, under charge of his oath. He is 22 years old, and he did not sign because he said he did not know how to write. Signed by the same Officials as above.

Governor Miro receives these two declarations and on August 7, 1784, decrees: Considering the foregoing depositions, hold the person of Thomas Smith and let the Escribano go to the prison to take his declaration, which reads:

In the city of New Orleans, on August 7, 1784, His Lordship, sitting in his Audience Chamber, caused to appear before him the man who has been imprisoned for robbery. Governor Miro, through the Interpreter and before the Escribano, received his oath taken by God, Our Lord, on the Holy Bible, because he is a Protestant, under charge of which he promised to speak the truth, whereupon the following questions were put to him:

What is his name, how old, state, profession, where was he born and where does he live?

He answered his name is Thomas Smith, aged 22 years, a bachelor and a sailor. He was born in the County of Maryland in the Province of Baltimore and lives in this city.

Why is he a prisoner and by whom was he arrested?

He thinks he is a prisoner because he robbed the house of a Spaniard, named Molina, of a few clothes that were spread out on the gallery. This man denounced him to the authorities, so he was arrested by His Lordship's orders and placed in the Royal Prison.

What did he steal and how did he dispose of the stolen articles?

He stole 1 white handkerchief, 1 blue cloth cloak, 2 vests, 1 short white coat, 1 shirt, 2 pairs of short trousers, 1 pair of long trousers, 1 silk stocking, only. He sold Miguel Jourdian (Gordan) 2 pairs of short trousers for 4 pesos, which he has not paid. The rest were sold to Mr. Campbell for 7 pesos, of which amount he has received 2½ pesos. At the time he did the stealing he was drunk. He declared that what he has stated is the truth, under charge of his oath. He signed with His Lordship, the Interpreter, and the Clerk of the Court.

Governor Miro, on Assessor Postigo's advice, decrees: Let the man named Molina declare what articles Thomas Smith has stolen from him and on what day.

When the said Molina was notified of the foregoing decree, he answered that he had no declaration to make because he did not wish to engage in a law suit. He is now satisfied, since he has

in his possession all the clothes stolen from him which His Lordship ordered returned to the rightful owner. In fact, he has received everything except 1 white shirt valued at 4 pesos and 1 thread stocking. This declaration is set down as a matter of record and attested to by the Escribano.

Esteban Miro, on Juan del Postigo's advice, receives this statement and later a decree is rendered, reading: In the city of New Orleans, on September 16, 1784, Esteban Miro, Colonel of the Fixed Regiment of this Place and Governor, ad interim, of the Province, said: That having examined these records, he condemns and does condemn Thomas Smith to four years' hard labor in the prison of this city, and he must not break his time of service under the penalty of being assigned to the galleys for another period just as long. Guillermo Campbell must pay a fine of 25 pesos and pay the costs of the Court for having bought stolen goods. For this is His Lordship's sentence, thus he has decreed, ordered and signed. (Signed) Esteban Miro; Licenciado Postigo.

The record ends here.

August 13.

Proceedings brought by Francisco Birot to be granted a permit to sell a house belonging to him.

No. 108. 3 pp.

Court of Governor Esteban Miro.

No Assessor.

Escribano, Rafael Perdomo.

This incomplete proceeding illustrates the legal formalities required to enable the owner of a house in New Orleans to obtain permission to sell said house at public auction.

Francisco Birot sets forth in a petition that it is convenient to his interests to sell, at public auction, a house belonging to him, on Burgundy Street, adjoined on one side by Mr. Perren's real property and on the other by that of Mr. Larch. In order to do so he prays the Court to grant him the necessary permit to hold the sale and to commission the Escribano to proceed with it, after all legal formalities have been complied with. Miro rules: As it is prayed.

The three public calls for the auction are given August 13 and 23 and September 1st.

On September 11, Francisco Birot, in a petition, states that the three public calls for the sale of his house have been given, therefore he prays the Court to assign a day for holding the auction. Governor Miro decrees: Whereas the three public calls having been made, as the law requires, he assigns the 13th day of the current month for the public sale. Let the party be cited, and with the assistance of the present Escribano, to whom this proceeding is entrusted, the house must be cried and adjudicated to the highest bidder.

The record ends here and is therefore incomplete.

August 16.

For Information.
Proceedings brought by Antonio Mendez to prove his legitimacy, purity of blood, life and habits.

No. 83. 6 pp.

Court of Governor Esteban Miro.

Assessor, Juan del Postigo.

Escribano, Rafael Perdomo.

This case is an excellent illustration of the legal procedure involved in establishing proof of one's legitimacy of birth, purity of blood and good conduct. Such proceedings were quite frequent in the Spanish colonies.

Antonio Mendez, a native of Havana and a resident of New Orleans, petitions to say it is convenient to him to have witnesses testify in answer to the following questions:

1st. Whether he is not the legitimate son born of the lawful marriage of Josef Mendez, a native of Pontevedra, in the Kingdom of Galicia, and of Ana Muñoz de Lara, born in the city of Havana?

2nd. Is it not true that his said parents always kept him in their house and called him their son and he, in turn, called them his parents?

3rd. Is it not true that his said parents and maternal grandparents are and always have been old Christians, free from the taint of all impure races, such as Moors, Jews, mulattoes and Indians, and have not been recently converted and have never been prosecuted for infamous crimes, but on the contrary have always been employed in places of honor, have held high offices and have distinguished themselves by their personal qualities?

4th. Has he not always comported himself with dignity, has his conduct not been correct, frequenting the Holy Sacraments often with the congregation of the faithful?

5th. Is not all that he has stated publicly and generally known?

Governor Miro, on Juan del Postigo's advice, decrees: Let the testimony this party requests be received, according to the tenor of the above interrogatorio, the taking of the said testimony to be entrusted to the Escribano, and done bring the depositions to the Court.

Marcos Aragon is the first witness called. His testimony reads: In the city of New Orleans, on the 17th of August of the year 1784, the Escribano, pursuant to the foregoing decree, received the oath of Marcos Aragon, a witness presented by Antonio Mendez to give the evidence the latter has offered and the Court ordered taken. This oath was made according to law, and when examined upon the tenor of the foregoing interrogatorio, to the first question he answered: This is true in all its contents. The witness knows it be a fact because for many years past he has been a frequent visitor in the home of Antonio Mendez' parents.

2nd. What has been stated is also true and well known to the witness through long years of acquaintanceship.

3rd. What is set down in this question is also true and well known to him, namely, that Mr. Mendez' grandparents have always been reputed to be white, people of distinction and free from any taint of impure races.

4th. It is true that Antonio Mendez has always conducted himself properly, and has never seen nor heard anything detrimental to him in the city of Havana, on the occasions the witness has been there, nor during his residence here. On the contrary he has heard everyone speak of him as an honorable man.

5th. All that he has stated is generally and publicly known and is voiced by everybody. What the witness has answered is the truth, under charge of his oath, he is 60 years of age, and he signed, to which Escribano attests. (Signed) Marcos Aragon, before Rafael Perdomo.

The other witnesses, Juan Francisco Romero, a resident of Havana, and Manuel Ramos, each in a separate declaration, corroborates the testimony of Marcos Aragon.

Then Governor Miro, on Juan del Postigo's advice, decrees: Considering the foregoing testimony produced for Antonio Mendez, by which he has proven his legitimacy of birth, purity of blood and good conduct, His Lordship says that he must approve and does approve his claim, and for its greater validation and force he interposes his authority and judicial decree. He orders the certified copy requested, authorized in public form, given to the petitioner, upon the payment of all just and due fees.

August 16.

Proceedings brought by Andres Duget, Captain of the Brigantine "The Thetis," to prove that the losses and damages his ship and cargo suffered were unavoidable.

No. 36. 59 pp.

Court of Intendant Martin Navarro.

Assessor, Juan del Postigo.

Escribano, Rafael Perdomo.

This action brought by a ship captain to protect himself from responsibility for damages sustained by his ship and cargo,

Andres Duget, Captain of the Brigantine "The Thetis," who has just arrived in this Port from Santo Domingo, France (Haiti, French West Indies), presents himself before the Court, stating that it is convenient to him to be granted the necessary permit to make a declaration (Marine Protest) by notarial act, to say that the damages to the body and keel of the ship under his command and also to the cargo was caused by grounding at the Balize of this river, and to prove that he executed all the manoeuvres required by the laws of navigation, so that no prejudice may ever result against him, and done to deliver the said Marine Protest to him to promote

as result of an accident which was unavoidable, affords an excellent example of the legal procedure involved in such cases. He also had to secure a special permit before he could have the damage to his ship repaired in New Orleans, so as to enable him to continue his voyage.

There is also a vast amount of interesting source material for the student of economic and social history of Spanish colonial Louisiana in the detailed lists of wages of slaves and skilled workmen, cost of board and provisions for the officers and crew of the ship, prices of materials and workmanship involved in the repair of the ship, pay of the ship's officers and crew, and various other such items listed in detail as part of the lengthy proceedings in the case.

Certified Copy of the Marine Protest.

what will be suitable. Intendant Martin Navarro, on Juan del Postigo's advice, rules: As it is prayed.

In the city of New Orleans, on August 16, 1784, before the Escribano and witnesses, appeared Andres Duget, Captain of the Brigantine "The Thetis," of La Rochelle, and resident of this city, who declared that on August 3rd, with the aid of a pilot, he attempted to enter the river by the East Pass, but his ship was driven in such way by the force of the current that it was thrown on a sandbank where it grounded in the abovenamed Passage. He used every means possible to prevent the accident but to no avail, and seeing the ship labored under the strain and was taking too much water, according to custom he fired his cannon several times to ask help. A launch came from the Balize to assist them. At this time there were four feet of water in the hold, and as The Thetis continued to labor he decided to save the cargo, consisting of several Negroes and some provisions that had not become wet. He transferred them to a small island, a quarter of a league away, but to accomplish this it was impossible to avoid risk to the Negroes, and as a result five died and eight were taken ill during the time they remained on the island. On the day following, August 4th, it grew calmer, so they tried to navigate the ship, after using the pumps to remove a great quantity of water from the hold and performing all other necessary manoeuvres to enable them to enter the river, and notwithstanding all these efforts they were unsuccessful until the 6th of this month. The Thetis suffered greatly from this accident, the rudder was unhung, the riggings damaged, the sails torn, and so as to preserve the Negroes from pestilence that had broken out among them, they were put ashore. Therefore, in consequence of what has taken place, he makes this declaration which must not be protested, either now or at any other time, and for its validity he obligates his present and future estates and renounces the laws and privileges in his favor with the general in the form that prohibits it. In testimony whereof, he declares and signs, the witnesses being Francisco Carcasses and Manuel Monrroy, here present. Signed in the original by Andres Duget, before Rafael Perdomo.

Certification (Procès-verbal) made by Captain Duget and the Officers of the ship.

We, the undersigned Captain and Officers of the Brigantine "The Thetis," of La Rochelle, certify that while anchored outside of and to the north of the Balize, on August 1st, we saw a launch. with several men on board, coming

from land, and they questioned us as to who we were and from whence we came and asked us to raise our Spanish flag. They then boarded us and gave us a pilot named Domingo. We cast anchor at about a league from the Pass where we took on another pilot, called Diago, for the Balize. The day following, after throwing out ropes to make the ship secure and waiting until later when the wind freshened a little, the pilot then showed us a Pass to the north of East Pass, where we touched bottom two different times, making it necessary to throw out an anchor to free "The Thetis," and after she was refloated we were forced outside a second time. Diego then took us through the East Pass, where we grounded in 1½ fathoms of water, and while in this position we did everything possible to float the ship, however, the current always threw us against the north bank, even though the wind was in the opposite direction. At that time we fired three volleys from our cannon, according to custom, then immediately afterward a launch from the Bazile, which was beside another vessel that had grounded just ahead of us, came alongside of our ship. They cast our other anchor, upon which we veered from time to time, when the sea permitted, all through the night. The following day, the 3rd of the current month, with the wind from the southeast, the currents always flowing north, we veered on our anchor, with the sea running high, from 2 o'clock in the morning until 3 in the afternoon, making soundings all the while and using the pumps, because during this interval we were obliged to pump continually to remove the water from the hold, for when we made an examination we found the storeroom flooded, which caused us to think several planks of the ship had become unnailed, since the hold was half full of water. In testimony whereof, we have drawn up the present procès-verbal and signed on board the Brigantine, The Thetis, August 3, 1784. (Signed) Duget; Bonhomme; Rulliere; Toulmay; Octeau.

Captain Duget petitions to present witnesses to prove the truth of his declaration.

Captain Duget set forth that, as may be proven from the certified copy of his declaration and the procès-verbal attached to this petition, his ship and cargo have suffered greatly as a result of grounding and other misfortunes that have overtaken him. Therefore, in consideration of the above and because the losses and damages were through no fault of his, and, furthermore, so that the one legally responsible may be held accountable, may it please the Court to receive the testimony of the witnesses he will present, who must be questioned upon his declaration, the taking of their depositions to be entrusted to the Escribano, and done deliver them to him to be used to promote what may convenient to him.

In a secondary petition he states that, in order to ascertain the damages his ship has sustained, and to make the necessary repairs so as to sail to his Port of destination with perfect se-

curity, may it please the Court to name two Ship Captains and two master carpenter-caulkers to make an examination, in the presence of the Escribano, and done deliver their statement to him.

Decree. Martin Navarro, on Juan del Postigo's advice, decrees: In the principal petition, admit the testimony that is offered, the taking of it to be entrusted to the Escribano. And as to the secondary petition, let Thomas Doudon and Isidore Ducros, Ship Captains, and Francisco Anllolin (Anyolin) and Pedro Visoso, the former a master ship carpenter and the latter a master caulker, be named to examine the Thetis, in the presence of the Escribano, and done deliver the statement of their findings to the petitioner. But before anything further is accomplished, the foregoing document already presented must be translated into Spanish by Juan Josef Duforest.

Notification, acceptation and oath. On the said day (August 19, 1784) the Escribano personally notified Isidoro Ducros, Thomas Doudon, Francisco Anllolin, and Pedro Visoso of the foregoing decree, and they said they accepted and did accept and swore by God and the Cross to proceed well and faithfully with the examination they have been ordered to make. Those who could sign did so, to which the Escribano attests. (Signed) Isidoro Ducros; T. Doudon; Pedro Visoso; before Rafael Perdomo. Francisco Anolyn could not write.

Second notification, acceptation and oath. On the said day, month and year (August 19, 1784), the Escribano personally notified Juan Josef Duforest, Public Interpreter, of the foregoing decree, and in consequence of it he said he accepted and did accept and swore by God and the Cross, according to law, to proceed well and faithfully with the duties entrusted to him, and he signed, etc.

This is followed by the Spanish translation of the procès-verbal, signed by the Captain and Officers of the Thetis, already given.

Testimony of the witnesses. In the city of New Orleans, on August 20, 1784, Andres Duget presents before the Escribano, as witness, Josef Rulliere, Second Captain of the Brigantine "The Thetis," who received the oath the latter took by God and the Cross, according to law, under charge of which he promised to speak the truth, and when examined upon the tenor of Andres Duget's declaration, through Juan Josef Duforest, Public Interpreter of this city, he said: He came to this Port as Second Captain of the Brigantine, which sailed from Guarico (Cap Francais) for New Orleans. The voyage was made without incident until they reached the Balize of the river, at 7 o'clock in the morning of the 1st of the current month,

with the wind from the southeast to east-southeast, when about a league and half away from the Pass he spoke to the launch that had brought their pilot. He was asked who they were, from whence they came and the name of the ship. The Captain of the said launch requested him to raise his flag, which he did, then he came on board and assigned them Domingo, as pilot, and they sailed until they were nearly a quarter of a league away from East Pass. At this point the wind not being very favorable for their entry, they made soundings, and the abovenamed pilot returned with the launch to the Bazile, leaving another to replace him, called Diego. On the following day, the 2nd of the said month, after having waited to approach the Pass until the wind freshened, so as to enter by the other Pass, farther north than the East Pass, the ship touched twice on sandbanks, where they remained stranded, therefore they cast anchor with the necessary cable upon which they veered, until they succeeded in making the vessel navigable, and from there the pilot took them to the East Pass, where they grounded in 1½ fathoms of water. While in this position they resorted to every possible manoeuvre to refloat the Thetis, but without success, because of contrary current which threw them upon the north bank, notwithstanding a wind favorable for their entry. At this point several volleys were fired from the cannon to ask help, and after a great while, at 4 o'clock in the afternoon a launch arrived, which could not come to their assistance before, as it was occupied with another ship that had grounded just as they had. The said launch immediately extended their anchor outside of the Pass so that they could veer upon it during the flowing of the tide, as it was impossible to navigate the ship. On the 3rd of the said month, the wind blew strongly from the southeast, in spite of which the currents continued to throw them against the north bank, forcing them to return and veer on the anchor already cast, with flow tide from 2 o'clock in the morning of the said day up to 2 in the afternoon. While in this position he went to examine the pump and found the ship had taken much water, causing the greater part of the provisions in the storeroom to become useless, and there was not the least doubt in his mind but that the ship was greatly damaged, as they found 4 feet of water in the hold, and that owing to this the Thetis labored greatly and suffered much from the heavy swell of the sea. Under such trying conditions, in the end to save their cargo, composed of Negroes and some provisions that had not become wet, they decided to transfer them to a small island, a quarter of a league away. In this place, because of the many inconveniences they had endured, five of the Negroes died and eight became ill during the time they remained on the said island. After breakfast, the following day, August the 4th, the weather and currents having improved they succeeded in refloating the ship and freeing it of the great quantity of water it had taken. They then resorted to the necessary

manoeuvres to enter the river, but did not succeed until the 6th of the said month when their efforts had the desired effect. As a result of this accident the vessel sustained certain damages and losses, namely, the rudder was unhung, the riggings broken and the sails completely torn, so for this reason they sent the Negroes on land to shelter and protect them. The witness answered that what he has declared is the truth, under charge of his oath, and that he is 28 years of age. He signed with the Interpreter, to all of which the Escribano attests. (Signed) Joseph Rulliere; Juan Josef Duforest; before Rafael Perdomo.

Other witnesses testify.

Bernardo Bonhomme, Lieutenant of the Brigantine, Juan Octeau, Quartermaster of the Thetis, Juan Ristol (Ritou), a sailor, Leon Boulemay, 4th Officer of the vessel, through Interpreter Juan Josef Duforest, each in a separate declaration, give the same testimony as Juan Rulliere.

Examination.

In the city of New Orleans, on August 21, 1784, the Escribano, assisted by Isidoro Ducros and Thomas Doudon, Ship Captains, Francisco Anllolin (Anyolin), Master Ship Carpenter, and Pedro Visoso, Caulker, went on board the Brigantine "Thetis," to make an investigation, as they had been ordered to do, pursuant to the foregoing decree, and having gone over the ship carefully, declare before the forenamed Escribano that they found several pieces of scantlings of the quarter-deck and fore-deck broken and also the top timbers, other timbers and puddenings disconnected and out of place, and all in a bad state, which they inferred had been caused by the grounding of the Thetis when she attempted to enter the river, as appears from the procès-verbal drawn up at the time by the said Captain Duget and filed with these proceedings. After the experts had finished their examination they have unanimously decided that the brigantine can be put in prime condition to continue her voyage, without risk, by renewing all the scantlings, top timbers, other timbers and puddenings where necessary, replacing the fore-deck and those adjacent to it, to render them seaworthy, and, finally, to make these repairs the ship will have to be raised so as to expose the keel to ascertain what damage was caused to the outside as well as the inside of her bottom, by grounding on the 3rd of the current month. After making a careful inspection they will render a statement of conditions as they will find them. This is as much as they know and can declare, under charge of the oath they have taken. (Signed) Isidoro Ducros; Tomas Doudon; Pedro Visoso. Francisco Anyolin did not sign because he said he did not know how to write. To all of which the Escribano attests.

Captain Duget petitions for a permit to repair his ship.

Captain Duget petitions to say that the records of the case, together with the report of the examination made at his instance, have been delivered to him, therefore, since it is convenient to his interests to repair the ship, he prays the Court to grant him a permit to do so. Intendant Navarro, on Assessor Postigo's advice, receives this request and on August 25, 1784, decrees:

Decree.

Considering the merit that results from the testimony produced by Andres Duget and the examination made by two Ship Captains and a Master Ship Carpenter named by the Court, this party is granted a permit to make such repairs on his ship as may be judged suitable. He authorizes Captain Duget to this effect, pursuant to his petition. Fees 32 reales. (Signed) Martin Navarro; Licenciado Postigo.

Captain Duget asks for a second examination by the same experts.

On August 27, 1784, Captain Duget prays for a second examination of his vessel by the same Captains and Ship Carpenters already named by the Court. Martin Navarro, on Juan del Postigo's advice, rules: As it is prayed.

Second examination.

In the city of New Orleans, December 21, 1784, the Escribano, together with Isidoro Ducros and Thomas Doudon, Ship Captains, Francisco Anllolin, Master Ship Carpenter, and Pedro Visoso, Caulker, went on board the Brigantine "Thetis" for an inspection. They found the ship at the levee of this city, inclined so as to expose the keel to permit of an examination of the hull and bottom. After they had gone over all parts carefully, in accordance with the oath they have taken in this proceeding, they unanimously agree that, as a result of the grounding at the Balize, it will be necessary to unsheath the vessel entirely; they have arrived at this conclusion because they found several planks of the main hull out of place, the seams, for lack of oakum, full of mud and silt, and other parts of the keel broken, particularly where the prow is jointed together. The experts declare that this examination has been made to the best of their knowledge and understanding, under charge of the oaths they have taken. All signed except Francisco Anllolin, who cannot write.

Captain Duget again petitions, this time asking to present his account of expenditures.

On March 4, 1785, Captain Duget petitions, setting forth that in consequence of having completed the careening and general repairs of his ship, together with the replacement of all necessary parts, as was agreed, pursuant to his petition on page 30 of this case and the decree rendered to

same, he now solemnly presents the general accounts of all expenditures caused by these indispensable repairs, and also the vouchers, approvals and receipts, here attached, so that Juan Josef Duforest, Public Interpreter, may proceed with the translation of them from French, the language in which they are written, into Spanish, and when these accounts have been sufficiently examined and approved, he prays the Court to order the originals delivered to him and to retain and file copies at the end of this suit. With regard to all the work that has been done as the result of an accident, he further asks that a clear, convincing statement be given that arrears, losses and damages were not caused through lack of intelligence, omission, malversation, or any fault of his, so that no charges may be brought against him in the future, but on the contrary must be assumed by the one who is legally responsible. And considering what he has declared, he prays the Intendant to approve this proceding, and for its greater validation and force to interpose his authority and judicial decree. Juan Ventura Morales, acting Intendant General, for Martin Navarro, on Juan del Postigo's advice, decrees: Whereas, the accounts having been presented (not included with the records), let them be translated by Juan Josef Duforest, after he has accepted and taken oath. Let these said translations be placed at the end of this case, and done a decision will be rendered.

Notification, acceptation and oath. On the said day, month and year (March 4, 1785), the Escribano personally notified Juan Josef Duforest, Public Interpreter, of the foregoing decree, and when informed of its contents he said that he accepted and did accept the appointment that has been made, and he swore by God, Our Lord, and a Sign of the Cross, according to law, to proceed well and faithfully with the translations he has been ordered to make. He signed, to which the Escribano attests.

Translations. In the city of New Orleans, on March 5, 1785, in virtue of the foregoing decree, Juan Josef Duforest proceeds to make the translations, as ordered, in the following manner.

No. 1. Messrs. Reaud & Fortier owe for a pirogue sent to the Balize to bring an officer of the Brigentine "The Thetis," which was stranded, to the city and to take him back to the said Balize, including provisions for the skipper, sailors and officer, the sum total amounting to..... 55 Pesos

Received the abovesaid 55 pesos, New Orleans, August 8, 1784. Miguel Roche.

Payment approved. (Signed) Duget.

No. 2. Messrs. Reaud and Fortier owe for the rental of 3 boats that we have sent down to the Balize at the entrance to the Mississippi River, on their order, with 33 Negroes and 3 white overseers, to save the Negroes of the Brigantine "The Thetis," and to give aid to the said ship, namely:

For the rental of 3 boats at 30 pesos each	90	Pesos
For 33 days work of the Negroes including their food	201 –	6
Paid to the 3 white overseers, including their food, at 20 pesos each	60	
Provisions taken for the crew and Negroes of the Brigantine:		
1 barrel of salt meat	20	
6 barrels of rice at 6 pesos	36	
3 the same, of beans, at 4 pesos	12	
Tobacco and corn	21	
Fresh bread and vegetables, etc	26 –	4
	467 –	2
Brought forward	467 –	2
For 11 empty sacks for the rice and beans	11	
Gratuities paid to the Negroes who have worked to save the ship	46	
	524 –	2

Received from Messrs. Reaud & Fortier the abovesaid sum of five hundred and twenty-four pesos two reales. New Orleans, August 15, 1784. (Signed) Lieutaud, Fabre & Company. Payment Approved. (Signed) Duget.

No. 3. New Orleans, August 5, 1784.

Messrs. Reaud & Fortier owe Landreaux, baker, for hardtack sold to them to be sent to the Balize for the crew and Negroes of the Brigantine "The Thetis," namely:

973 pounds of hardtack at 8 pesos 4 reales the hundred-weight	82 –	5
Barrels and carts to carry them on board the boats	5 –	
	87 –	5

Received the abovesaid sum from Messrs. Reaud & Fortier, amounting to eighty-seven pesos 5 reales. New Orleans, August 15, 1784. (Signed) Landreaux. Payment approved. (Signed) Duget.

No. 4. Messrs. Reaud & Fortier owe to Roche for help given to Captain Duget of the Brigantine "Thetis," at the time of the shipwreck, in pilotage, launches and boats, the sum of..... 106 Pesos
For bringing the said brigantine to the city from the Balize, by a pilot..... 30

Pesos 136

Received from Messrs. Reaud & Fortier, the abovenamed sum of one hundred and thirty-six pesos. New Orleans, August 15, 1784. (Signed) Miguel Roche. Payment approved. (Signed) Duget.

No. 5. Mr. Fortier owes Mr. Juan Prieto for the Brigantine, Thetis, 186 pounds of lead at 20 sols..... 37 Pesos 1½ Reales
11 the same, of nails at 4 reales..... 5 4½

42 5½

Received the full amount. New Orleans, January 24, 1785. (Signed) Juan Prieto. Payment approved. (Signed) Duget.

No. 6. Messrs. Reaud & Fortier owe Pedro Visoso for materials supplied to repair the brigantine "The Thetis," namely:

7 barrels of tar at 5 pesos..... 35 Pesos
1 barrel of a composition of pitch, grease, rosin and oil..... 3
14 pounds of tallow at 2 reales..... 3 – 4
6 barrels to bream the ship at 4 reales..... 3
1 trip of the carter..... 4
3 bolts for the prow..... 3
10 tackle-blocks that have been used for 28 days at 2 reales each..... 35
To bream..... 8
1 barrel of tar..... 6
1 the same, a mixture of pitch, grease, rosin and oil..... 3
For personal services rendered..... 25

125

These entries amount to the sum of one hundred and twenty-five pesos. New Orleans, January 16, 1785. (Signed) Pedro Visoso. Payment approved. (Signed) Duget.

No. 7. Manifest of the sums paid by Andres Duget, Captain of the Brigantine "Thetis," during her detention in New

Orleans from September 14, 1784 to February 15, 1785, while the said Brigantine was careened, namely:

To Pedro Andouin, Quartermaster, for five months salary at the rate of 25 pesos a month	125	Pesos
To 5 sailors at the rate of 15 pesos a month each, and 1 at 75 pesos, amounting altogether to	375	
For meals for the Quartermaster at 11 pesos 2 reales a month for 5 months	56 – 2	
To 5 sailors at 7 pesos 4 reales each a month for 5 months	187 – 4	
To 1 cabin boy for meals and salary for 5 months at 8 pesos a month	40	
3½ casks of rum for the crew at 30 pesos a cask	105	
	888 – 6	
Sum brought forward	888 – 6	
For Captain Duget's board at the rate of 45 pesos a month	225	
For his room rent and for candles for the Brigantine for 5 months at 10 pesos a month	50	
For medicines, wood and candles that he has consumed during 5 months, and for washing his clothes	77	
For the salary, for 5 months, that he has received from Messrs. Reaud & Fortier at the rate of 40 pesos a month	200	
	1440 – 6	

Received from Messrs. Reaud & Fortier the sum of one thousand four hundred and forty pesos, six reales, that have been used to pay the bills of the Brigantine "Thetis," as stated above. New Orleans, February 15, 1785. (Signed) Duget.

No. 8. New Orleans, September 14, 1784.

Messrs. Reaud & Fortier owe to Francisca, a bakeress, for fresh bread delivered to the crew of the Brigantine "Thetis," Andres Duget, Captain, from the above date until February 15, 1785, according to the vouchers signed by the said Captain, namely:

1009 loaves of bread for the crew at 2½ reales each	315 P. 2½ R.

Received the abovenamed sum of three hundred and fifteen pesos, two and one-half reales, from Messrs. Reaud & Fortier. New Orleans, February 15, 1785. (Signed) Francisca Montreuil. Payment approved. (Signed) Duget.

No. 9. New Orleans, October 1, 1784.

Messrs. Reaud & Fortier owe Chabot for goods sold to them for the Brigantine "Thetis."

7 pieces of 4 ply canvas for sails, at 40 pesos a piece ..... 280 P.

Received from Messrs. Reaud & Fortier the sum of two hundred and eighty pesos, the full amount of the above account. New Orleans, October 15, 1784. (Signed) Chabot. Payment approved. (Signed) Duget.

No. 10. 451 ells of canvas, some of 4 ply, for square sails, and some old canvas has been used to repair the sails of the Thetis. New Orleans, January 5, 1785. (Signed) Duget.

Received from Messrs. Reaud & Fortier the sum of one hundred and thirty-five pesos, two reales, for repairing the sails of the Brigantine "The Thetis," Andres Duget, Captain, in accordance with the price agreed upon with the abovenamed Captain. New Orleans, February 5, 1785. (Signed) Juan Labadit. Payment approved. (Signed) Duget.

No. 11. September 22, 1784.

Messrs. Reaud & Fortier owe Dejean, blacksmith, for work done on the Brigantine "Thetis," Andres Duget, Captain, namely:

Made at various times, 125 tools weighing 335 pounds at 4 reales a pound	167	– 4
Repairing 105 tools weighing 171 pounds at 1½ reales	32	
Made 2 small irons for caulking	2	
1 splicing fid with handle, weighing 7 pounds	3	– 4
4 iron wedges weighing 28 pounds	14	
4 augers 5 feet long and 9 lines thick at 2 pesos 4 reales	10	
2 the same, 1 inch thick	5	
2 hammers weighing 13 pounds	6	– 4
Repairing 1 auger		4
1 caulking iron	2	– 4
4 beam arms for the shrouds and repairing the chain plate, weighing 66½ pounds	33	– 2
3 small bolts for the same	1	–
	277	– 6
Brought forward	277	– 6
Repairing 6 gunwales	2	
Making 17 large chains weighing 64½ pounds	32	– 2
4 bolt rings, 6 rope guards, and stoppers for the cable weighing 41 pounds	20	– 4

3 braces for the keelson weighing 24 pounds	12	
12 staples for the keel weighing 14 pounds	7	
6 dozen rivets	6	
4 beam arms weighing 31 pounds	15	4
For lengthening one, the same	2	
2 dozen small clamps	3	
Making 1 iron ring for the yard arm of 1 yard, weighing 12½ pounds	6	2
For mending one, the same	1	4
For making 4 dowel pin bolts for the halliards, weighing 21 pounds	10	4
	396	2
Brought forward	396	2
4 bolts for riveting, weighing 6 pounds	3	
6 iron mast hoops		4
Made a rudder pin, gudgeon and nails necessary for the head of the rudder, weighing 28 pounds	14	
24 rivets	2	
Repaired 2 bolts and bolt rings	6	
Made 2, the same, with bolt rings weighing 20 pounds	5	
	421	4
Received 1400 pounds of old iron at 6 pesos the hundredweight	84	
Remainder due	337	4

Received the full amount. New Orleans, March 1, 1785. (Signed) Dejean. Payment approved. (Signed) Duget.

No. 12. New Orleans, October 18, 1784.

Messrs. Reaud & Fortier owe Estevan Rocquiny for work done on the Brigantine "Thetis", Andres Duget, Captain.

64 old iron tree nails, weighing 119 pounds repaired at 2½ reales	37	1½
54 the same, weighing 167 pounds at 2½ reales	52	1½
Repairing an iron circle		6
49 old iron bolt rings weighing 74 pounds at 2½	23	1
Repairing 1 bolt ring	1	
8 bolt rings, 8 tree nails } weighing 14 pounds at 2½	4	3
Making 73 new tree nails for bolts, weighing 228 pounds, at 4 reales	114	
4 chains for the shrouds, weighing 112 pounds, at 4 reales	56	

8 bolt rings for the upper deck, weighing 48 pounds, at 4 reales	24
1 mast hoop weighing 6 pounds	4
2 the same, for the support of the top mast, weighing 28 pounds, at 4	14
2 main braces weighing 12 pounds at 4	6
50 hoops	3 – 1
40 rivets	2 – 4
230 pounds of nails at 3½	100 – 5
2 hinges with their latches	3 – 4
8 pairs of hinges for the doors of the poop, weighing 28 pounds, at 4	14
Repairing 1 pump handle	1 – 4
1 Arch for an oven, weighing 12 pounds, at 4	6
10 bolts for the stanchions, weighing 24 pounds, at 4	12
2 stays of the dead block for the anchor beam, weighing 20 pounds, at 4	10
1 iron bar for the kitchen, weighing 4 pounds	2
	491 – 7
Brought forward	491 – 7
12 large rings for the scuttle at 2	3
	494 – 7

Received from Messrs. Reaud & Fortier the abovesaid sum of four hundred and ninety-four pesos, seven reales. New Orleans, March 1, 1785. (Signed) Estevan Roquiny. Payment approved. (Signed) Duget.

No. 13. A statement of the work done to repair the windows of the cabin of the Brigantine "Thetis", Andres Duget, Captain, namely:

5 pairs of window frames for the cabin	24	Pesos
6 pairs of hinges at 1 peso each	6	
14 panes of glass at 1 peso 4 rs	21	
To put in the panes of glass	1	
	52 – 1	

Received from Messrs. Reaud & Fortier the sum of fifty-two pesos, one real, the full amount of the above bill. New Orleans, March 1, 1785. (Signed) Guillermo Quays. Payment approved. (Signed) Duget.

No. 14. New Orleans, September 15, 1784.

Statement of materials supplied by Lieutaud & Company for repairs made on the Brigantine "Thetis", Andres Duget, Captain, including days' labor of carpenters and caulkers mentioned in the other part, namely:

2437 pounds of nails at 2½ reales				761	– 4½
1317 feet of oak at 4 reales				658	– 4
4089 feet of timber for sheathing at 5 sols a foot				204	– 3½
525 the same, for thin beams of 5/6 at 6, the same				31	– 4
526 feet for heavy beams and stringers	at	2	reales	131	– 4
209 planks	"	1	"	26	– 1
5003 feet of planking for the deck at 8 sols a foot				400	– 1½
442 feet of scantling	at	4	reales	221	
150 feet for stringers	"	"	"	75	
1391 pounds of oakum	"	1½	"	260	– 6½
18 bars for the handspike	"	4	"	9	
1 mast for the main top sail, 29 feet,	"	"	"	14	– 4
1 the same for the gallant sail, 22 "	"	2	"	5	– 4
1 boom for the studding sail, 20 "	"	3	"	5	
1 oak plank, 20 "	"	2	"	5	
18 feet of wood for the skids for launching	at	2	reales	4	– 4
9 small knees	"	4	"	4	– 4
160 pounds of brown paper	"	15	sols	24	
7 barrels of tar	"	4	pesos	28	
6 the same of a mixture of pitch, rosin, etc.	"	3	"	18	
150 pounds of red ochre	"	3	"	56	
Pesos				2945	– 1
Brought forward				2945	– 1
3 small barrels of red ochre at	11	Ps.	2	33	– 6
16 pounds of salt	"		2½	5	
6 the same of sailmakers yarn	"		4	3	
2 salt cellars	"		4	1	
4 packages of scupper nails	"		6	3	
3 goat skins				7	– 4
For planking used on board				111	– ½
69 ells of canvas for sails	at	5	reales	43	– 1
72 the same, canvas for studding sails	"	3	"	54	
71 the same	"	1	peso	71	
4 small ropes	"	3	pesos	9	
224 pounds of large screws	"	20	"	44	– 6
148 the same, smaller		10	sols	14	– 6
Pesos				3345	– 6½

Received from Messrs. Reaud & Fortier the above sum amounting to three thousand three hundred and forty-five pesos, six reales (and a half). New Orleans, March 1, 1785. Lieutaud & Company. Payment approved. (Signed) Duget.

Day's work of carpenters and caulkers who have labored to repair the Brigantine "Thetis".

Masters:									
Luis	97¾	days	at	2	pesos	4	reales	244	– 2
Seguin	114½	"	"	"	"	"	"	286	– 3
Alexo	102½	"	"	"	"	"	"	256	– 2
Planchiet	94¾	"	"	"	"	"	"	236	– 7
Delaya	115½	"	"	"	"	"	"	288	– 1
Cheyrone	36	"	"	"	"	"	"	90	
Daurieux	39¾	"	"	"	"	"	"	99	– 3
Dunan	9	"	"	"	"	"	"	22	– 4
Cadet	37	"	"	"	"	"	"	92	– 4
Teresa	23¼	"	"	"	"	"	"	58	– 1
Angelline	6	"	"	"	"	"	"	15	
Guenard	36¼	"	"	"	"	"	"	90	– 5
Jimmie	26	"	"	"	"	"	"	65	
Juan	13	"	"	"	"	"	"	32	– 4
Teysaira	40	"	"	"	"	"	"	100	
Audibert	36	"	"	"	"	"	"	90	
Pascal	44	"	"	"	"	"	"	110	
Francisco	40	"	"	"	"	"	"	100	
Negroes:									
Andres	97¾	"	"	1	"	"	"	146	– 5
Juan	2	"	"	"	"	"	"	3	
Pablo, Foreman	98½	"	"	"	"	"	"	147	– 6
Pedro	62¼	"	"	"	"	"	"	93	– 4
Claudio	74	"	"	"	"	"	"	111	
Augustin	63¾	"	"	"	"	"	"	95	– 5
								2875	
			Brought forward					2875	
Josef Beauregard	50	days	at	1	peso	4	reales	75	
Francisco	61¾	"	"	"	"	2	"		
Isidor	83	"	"	"	"	"	"	104	
Silvio	95	"	"	"	"			95	
Josef	46	"	"	"	"			46	
Juan Bautista	57½	"	"	"	"			57	– 4
Romeo	32	"	"	"	"			32	
Seyan	10	"	"	"	"			10	
Santiago	20	"	"	"	"			20	
2 floating stages	26	"	"	"	"	4	reales	39	
2 hawsers, blocks, capstan and caldrons, 16 days at 7 pesos a day								112	
			Pesos					3552	– 1

Received from Messrs. Reaud & Fortier the sum mentioned above, namely, three thousand five hundred and fifty-two pesos, one real. New Orleans, March 1, 1785. Lieutaud & Company. Payment approved. (Signed) Duget.

No. 15. Reaud & Fortier owe for work done on the Brigantine "Thetis," Duget, Captain, namely:

For 12 deadeyes	18	
4 wheels with axles	5	
2 pump-brakes	3	
1 tackle-bloch for the halliards of the main mast	1 –	4
	27 –	4

Received the full amount. New Orleans, March 1, 1785. Estevan Plauché. Payment approved. (Signed) Duget.

No. 16. Reaud & Fortier owe for labor on the tackle blocks on the brigantine "The Thetis," Duget, Captain, namely:

For making 10 scupper holes and posts	20	
For 3 hawse holes, the same	12	
Item, 70 pounds of lead	18 –	4
	50 –	4

Received the full amount. New Orleans, March 1, 1785. (Signed) Pedro Webert. Payment approved. (Signed) Duget.

Statement of all disbursements.

Statement of the sums that Reaud & Fortier have paid, by order of Captain Andres Duget, to different firms and persons according to their bills and receipts, for repairs made on the brigantine "The Thetis," namely:

1.	Miguel Roche according to his bill and receipt	55	Pesos
2.	Fabre & Lieutaud, idem	524 –	2
3.	Landreau "	87 –	5
4.	Miguel Roche "	136 –	
5.	Juan Prieto "	42 –	5½
6.	Pedro Visoso "	125	
7.	Captain Andre Duget "	1440 –	6
8.	Fanchon, bakeress "	315 –	2½
9.	Claudio Chabot "	280 –	
10.	Juan Labadie "	135 –	2
11.	Dejean, Master-smith "	337 –	4
12.	Roquiny, " "	494 –	7
13.	Wil(l)iam Quays " "	22 –	1

14.	Lieutaud & Company according to the 1st bill	3345 – 6	
	Lieutaud & Company according to the 2nd bill	3552 – 1	6897 – 7
15.	Vebert according to his bill and receipt		50 – 4
16.	Esteban Blache		27 – 4
	Pesos		11002 – 2

We certify that we have paid the sum total of the above stated bills, amounting to eleven thousand and two hard pesos, two reales. In the city of New Orleans, on March 1, 1785. (Signed) Reaud & Fortier.

This translation has been made well and faithfully according to my legal knowledge and understanding, without injury to the party, and in testimony whereof I have signed. (Signed) Juan Josef Duforest.

Judgment.

In the city of New Orleans, on April 14, 1785, Juan Ventura Morales, Accountant of the Branch for the Friendship of the People with the Indians, in charge of the General Intendancy of this city, after examining these records said: That he must declare and does declare the testimony given by Andres Duget, Captain of the Brigantine "Thetis," as sufficient to prove that the damages and prejudices resulting from the grounding of the ship at the Balize of this river, with the loss of provisions and the death of five Negroes was through no fault of his, therefore His Lordship absolves the aforesaid Captain of all responsibility, because what has happened was not caused by lack of intelligence, malversation, nor neglect on the part of the said Captain. He further approves the bills for repairs and other sums paid by Andres Duget, amounting to eleven thousand and two pesos, two reales. And in order that all of the abovesaid may have greater validation and force, His Lordship interposes and does interpose his authority and judicial decree inasmuch as he can and must, by law. Let the costs be taxed and paid by this party. The present Escribano will provide him with the necessary certified copy of this proceeding. Assessor's fees 80 reales. (Signed) Juan Ventura Morales; Licenciado Postigo. Before Rafael Perdomo, Clerk of the Royal Treasury.

Andres Duget petitions for the original bills.

Andres Duget petitions to say that this cause is finished, however, his request on page 36 has been forgotten, namely, that the original bills presented in this suit be delivered to him; therefore may it please the Court to order this done. Acting Intendant Morales, on Juan del Postigo's advice, rules: As it is prayed.

Receipt. On the said day, month and year (April 15, 1785), the Escribano, pursuant to the foregoing decree, delivered the original bills, which have been translated and filed at the end of this proceeding, to Andres Duget, who hereby acknowledges to have received them. He signs this receipt in the presence of Francisco Carcasses and Manuel Monrroy, witnesses here present, to all of which the Escribano attests.

Note. Pursuant to the definitive judgment, the Escribano drew up a certified copy of this proceeding on 97 sheets of paper and delivered it to the party. New Orleans, April 16, 1785. To which the Escribano attests.

Note. In consequence of the foregoing decree he drew up a duplicate copy of these proceedings on 119 sheets of paper and delivered it to Alexo Reaud, as one interested in the Brigantine "The Thetis." New Orleans, May 4, 1785. To which the Escribano attests.

Taxation of costs. Taxation of the costs of the proceedings instituted by Andres Duget to prove that the losses and grounding of his Brigantine "The Thetis," at the Balize, were through no fault of his, in accordance with the last decree, and in conformity to the Royal Tariff of fees the said proceedings are set down on 59 sheets of paper.

Navarro's paraph. To Martin Navarro, Intendant General of this Province, for four half signatures and one full one, twelve reales..... 12 Reales

Morales' paraph. To Juan Ventura Morales, Intendant ad interim, for two half signatures and one full one, eight reales..... 8

Postigo's paraph. To the Auditor of War and Assessor General, for two decisions on pages 31 and 57, one hundred and twelve reales..... 112

Perdomo's paraph. To the Escribano, Rafael Perdomo, for his fees for the actual writing, occupations and assistances, including the certified copy on ninety-six sheets of paper, four hundred and twelve reales 412

To the Interpreter, Juan Josef Duforest, for attendance at seventeen sessions of the Court both for taking the declarations and for making translations, one hundred and eighty-seven reales 187

To Isidore Ducros, twenty-two reales for two assistances 22

To Thomas Doudon, for the same reason, twenty-two reales 22

To Pedro Visoso, for a like reason, twenty-two reales 22

To Francisco Anyolin, for two assistances twenty-two reales 22

To Andres Duget's agent, for six written petitions 30

To the Taxer for this assignment, including the said certified copy of ninety-six pages, thirty-nine reales 39

(888 reales

(111 pesos

Received, New Orleans, April 18, 1785. (Signed) Louis Lioteau.

August 17.

Juan Prieto vs. the Succession of Nicolas Perthuit.

No number. 6 pp.

Court of Assessor Juan del Postigo.

No Assessor, since he is Acting Judge.

Escribano, Rafael Perdomo.

To collect a debt.

This incomplete case illustrates the legal procedure involved in collecting a debt due by a succession. The manner of establishing the validity of the claim and the method of enforcing payment are clearly set forth.

The fly leaf of this case is missing. Page 1 is a promissory note, written in French, which reads: I have received from Mr. Juan Prieto, keeper of the stores of this place, the sum of 500 piastres for which I obligate myself to pay to him, or his order, in paper on May 3rd, or sooner, if I am able. New Orleans, May 4, 1782. (Signed) N. Perthuit.

Juan Prieto sets forth that it is evident from the note duly presented, the succession of the late Nicolas Perthuit owes him 500 pesos at date of maturity. Therefore he prays to have the widow, Mariana Durocher, ordered to take oath and declare whether the signature at the end of the note is that of her late husband, and done, that she pay him the sum mentioned. Juan del Postigo rules: The note having been presented, let the widow acknowledge, swear

and declare as requested, the taking of the testimony to be entrusted to the Escribano, and done deliver her deposition to the plaintiff.

In the city of New Orleans, on August 18, 1784, the Escribano, pursuant to the foregoing decree, went to the home of Mariana Durocher, widow of Nicolas Perthuit, where he received her oath made by God and the Cross, according to law, under the charge of which she promised to speak the truth, and upon seeing the note presented on page 1, she said that, as she remembers, the signature is the same her late husband was accustomed to make and that he owes the amount specified in the note.

Juan Prieto again petitions, this time averring that they have delivered to him the records of the case, together with the widow's declaration made at his instance, and as a result it has been proven that the amount mentioned is due him, therefore he prays the Court to order the debt paid, with a warning that a writ of execution will be issued against the succession if she does not do so. Assessor Postigo decrees: Whereas, according to the foregoing declaration given by Mariana Durocher, widow of Nicolas Perthuit, it appears that she owes Juan Prieto 500 pesos, which must be paid by her, under a corresponding receipt, for her own protection.

Nothing further is done, and on June 10, 1785, costs are taxed by Luis Lioteau at 9 pesos 5 reales.

[**Translator's Note:**—This fragment, evidently once formed a part of another record, because the taxation of costs reads: Taxation of Costs for 7 Incidents prosecuted by Juan Prieto, Alexo Reaud, Alexandro Beaure, Juan Paillet, Luis Boisdore, Francisco Mayronne and Andres Almonester against the late Nicolas Perthuit's estate, in accordance with the decree, on page 48, attached to the Intestate Proceedings to settle the decedent's successions, and conforms to the Royal Tariff of fees. These said Incidents are on 27 sheets of paper. For further particulars, see *Louisiana Historical Quarterly*, Vol. 22, No. 4, page 1215. Intestate Succession of Nicholas Pertuy (Pertuit, or Perthuit).—L. L. P.]

August 18.

Intestate Succession of Juan Carrière. Inventory and appraisement of his estate.

No. 139. 149 pp.

This succession is opened in the usual way with a formal announcement of the death of the person whose estate must be settled.

The first entry reads: In the city of New Orleans, on August 18, 1784, Esteban Boré, Junior Alcalde of this said city and its jurisdiction, declared: That now at

Court of Alcaldes Esteban Boré and Renato de Kernion.

No Assessor.

Escribano, Rafael Perdomo.

This case, involving the settlement of the succession of a New Orleans resident who had died while on a trip to France, affords an excellent example of the legal procedure followed in such cases. It also presents a large store of valuable source material for the student of the economic and social history of Spanish colonial Louisiana, such as the quantity, quality and valuation of various items of wearing apparel and household furniture, and the numerous items of merchandise listed as having come as cargo on a vessel trading to New Orleans at that date.

about 4 o'clock in the afternoon of this day, he was notified of the death of Juan Carrière, which took place while absent from New Orleans. The deceased did not execute a will or any other disposition. He left minor heirs and some property, and in order to place same in security and in the interest of the children, His Honor renders this decree to begin the process. For this purpose he commissions the present Escribano to make a formal collection of the keys of the decedent's chests, to be kept by him, provisionally, and at the disposition of this Court. For thus has His Honor decreed, ordered and signed. (Signed) Juan Esteban Boré. Before Rafael Perdomo.

Collection of the keys.

In the city of New Orleans, on the said day, month and year (August 18, 1784), the Escribano, in virtue of the commission conferred upon him, went to Juan Carrière's house to collect the keys in accordance with the foregoing decree. Four were delivered to him by the widow, Maria Sofe (Choffert). He holds these, provisionally, and at the disposition of the Court, and in testimony whereof he sets this down as a matter of record.

Order to search for the will.

New Orleans, August 19, 1784. Let the Escribanos del Numero certify whether Juan Carrière has ever drawn up a will before them, and done bring their certifications to the Court.

Certifications.

Pursuant to the foregoing decree, the Escribano notified Fernando Rodriguez, Notary Public, in person, and he said that to the best of his knowledge he must certify that neither before him, nor in the Archives in his charge, has a will, or any disposition, been drawn up and filed for Juan Carrière. New Orleans, August 19, 1784.

Second certification.

In fulfillment of the foregoing decree, Rafael Perdomo certified that no will, nor any other disposition, for Juan Carrière has been executed before him, nor filed in the Archives in his charge.

Decree.

Whereas: From the foregoing certifications it appears that Juan Carrière did not execute a will, nor any other disposition, before his death, therefore His Honor ordered Maria Sofe, the widow of

the abovesaid, to declare, under oath, as to the number, names and ages of the children left by her late husband. Let the taking of her testimony be entrusted to the Escribano and done bring her deposition to the Court.

Mrs. Carrière's declaration made at her home.

In the city of New Orleans, on the said day, month and year (August 20, 1784), the Escribano, in virtue of the commission conferred upon him, went to the dwelling house of Maria Sofe, widow of Juan Carrière, to receive the declaration she has been ordered to make by the foregoing decree, and upon arriving there he received the oath she made by God and the Cross, according to law, under charge of which she offered to speak the truth, and having been examined upon the tenor of the decree she said her husband left six children, namely: Maria Carrière aged 19; Rosa 18; Sofia 14; Luis 10; Julienne 7½ and Josef 1. She answered that what she has declared is the truth, in accordance with the oath she has taken, she is 40 years of age; and she signed, to which the Escribano attests. (Signed) Maria Choffert, Widow Carrière.

Decree.

Whereas: From the foregoing declaration it is evident that Francisco (Juan) Carrière has left minor children, therefore His Honor said that in order to have someone represent them, he must name and does name, as curator ad lites, Pedro Bertonière, Public Attorney, who must be notified for his acceptation, oath and bond and done return the said declaration of qualifications to the Court so that an act may be issued confirming the appointment.

Notification, acceptation, oath and bond.

On the said day, month and year (August 21, 1784), the Escribano notified Pedro Bertonière, Public Attorney, of his appointment, and he answered, saying he accepted and did accept and swore by God and the Cross, according to law, to proceed well and faithfully with the duties of his office to the best of his knowledge. He promises to take counsel of persons versed in such matters, who can and will advise him. Francisco Carcasses was present and declared that he constituted himself bondsman for Pedro Bertonière, obligating himself in such a manner that in case the latter does not comply with what he has agreed to do, either because he does not know or does not wish to do so, then he, as bondsman, will assume all damages, arrears, prejudices and losses caused the minors through having been badly defended, for all of which he makes their affairs his own without proceedings of citation, execution, or any other judicial or extrajudicial act against the said Curator. And for the fulfillment of this bond he pledges his present and future estate, inserting here the guaranty clause renouncing the laws in his favor with the

general that prohibits it. Thus he executes and signs, the witnesses being Andres de Molina and Manuel Monrroy, here present. (Signed) Pedro Bertonière and Francisco Carcasses, before Rafael Perdomo.

Act appointing a Curator.

In the city of New Orleans, on August 23, 1784, Esteban Boré, Alcalde Ordinario of this city and its jurisdiction for His Majesty, having seen the acceptation, oath and bond, given by Pedro Bertonière, Curator ad lites to Juan Carrière's minor children, said that he must appoint and does appoint him to the charge and must give and does give him the power necessary in law so that he may represent the said minors. He must take counsel, whenever needed, from persons qualified to give it, who can and must do so, if requested. And for greater validation and force His Honor interposes and does interpose his authority and judicial decree. He further orders that the records of the case be delivered to the said curator so that he may promote what is convenient. He signed, to which the Escribano attests. (Signed) Jean Etienne Boré.

Pedro Bertonière petitions to make an inventory and appraisement of the estate.

Pedro Bertonière, Procurador del Numero of this city, Curator ad lites to the late Francisco (Juan) Carrière's minor children in the testamentary proceedings taken at his death, etc., states that the records of the case have been delivered to him, so that he may set forth what may be favorable to the rights of his minors, therefore he prays it may please the Court to decree that an inventory and appraisement be made of all property left by the deceased. Alcalde Boré rules: As it is prayed.

The Curator petitions for the appointment of the two public appraisers.

The Curator avers that he has been directed to make an inventory and appraisement of all the decedent's property, therefore may it please the Court to order this said appraisement made by the two public experts. Esteban Boré rules: As it is prayed. Let the said experts be notified for their acceptations and oaths.

Notification, acceptation and oath.

On the said day, month and year (August 26, 1784), the Escribano notified Josef Adrian de la Place, in person, of his appointment, who said he accepted and did accept and swore by God and the Holy Cross to fulfill the duties of his office faithfully and without injury to the parties. He signed, to which the Escribano attests. (Signed) Adriano Josef de la Place.

Second notification.

On the said day, month and year, Rafael Perdomo went to Andres Wakarni's (Wackernie) house to notify him of his appointment

and was informed by the latter's wife that he is absent from the city at the German Coast. And in testimony whereof he sets this down as a matter of record.

Pedro Bertonière asks to have another appraiser named.

Pedro Bertonière petitions, stating that an inventory and estimation has been ordered made of all the decedent's property by public appraisers, and whereas Andres Wackernie, one of them, is absent from the Capital, as appears from the report set down by the Escribano, therefore may it please the Court to name another, officially, so that with this second appointee they may proceed with the said estimation. Alcalde Borè receives this petition and on August 31, 1784, decrees: Considering the absence from this city of Andres Wakerny, Public Appraiser, as the present Escribano's report shows, therefore His Honor names Guillermo Guiñan (Guignan) in his place to make an estimate of the property. Let him be notified for his acceptation and oath.

Decree.

Notification, acceptation and oath.

On the said day, month and year (August 31, 1784), the Escribano notified Guillermo Guignan of the decree appointing him appraiser, and in virtue of which he said he accepted and did accept and swore by God and the Cross, according to law, to proceed well and faithfully with the duties of his office without injury to the party, and he signed, to which the Escribano attests. (Signed) Guignan.

Pedro Bertonière petitions to have the day assigned for the taking of the inventory.

The Curator avers that he has been ordered to make an inventory. In order to do so he asks to have a day assigned for this purpose. Alcalde Boré decrees: Let the 3rd of the current month be set aside for the taking of the inventory. Notify the interested parties to this effect.

Inventory and appraisement made of the property in the city.

In the city of New Orleans, on September 3, 1784, Esteban Boré, Junior Alcalde for this city and its jurisdiction for His Majesty, together with Pedro Bertonière, defender named for the late Juan Carrière's minor children, and the Escribano went to the widow's dwelling house and upon arriving there began taking an inventory and making an appraisement as was ordered by the foregoing decree. Josef Adrian de la Place and Guillermo Guiñan, appraisers named by His Honor, were also present at the proceeding, which reads as follows:

First they inventoried and appraised 30 reams of paper for preserving tobacco, valued at	45	pesos
2 scales with 136 pound weights, estimated at	25	
2 large cypress trunks, estimated at	3	
1 day bed with its mattress and bed covers	5	
4 old large chairs	4	
18 chairs, 3 with arms, all old, valued at	15	
4 walnut tables, valued at	10	
8 curtains for doors and windows with their rods	18	
6 dozen plates, 8 dishes and 6 coffee cups, valued at	10	
12 silver covered dishes with 2 ladles	30	
12 ordinary knives	2	
12 large and small pots, 2 copper caldrons, 1 frying pan, and some gridirons	16 – 4	
4 metal candlesticks	4	
6 dozen table napkins, some good, others bad	25	
8 tablecloths	25	
15 sheets	38	
5 beds with their linen mosquito bars and 2 Spanish moss mattresses and 1 straw mattress each	80	
15 baskets with 2 flasks each	5 – 4	
88 demijohns, together with 10 pounds of tobacco rappee in each one	520	
6 sieves to sift the tobacco	4	
70 rolls of tobacco	280	
80 pesos worth of tobacco in bundles	80	

Negroes

A negro named Cupidon aged 25, valued at	500	
Another named Sipion of the Ibó tribe aged 30 years	450	
Another named Nago, untrained, aged 50 years	100	

At this point, because the bell rang for midday prayer (The Angelus), His Honor ordered this proceeding suspended, to be continued when requested, everything already inventoried to remain in the keeping of Maria Sofé, the widow, who has acknowledged to have received them and has drawn up a receipt in due form, which she signed with His Honor and other parties. All is attested to by the Escribano. (Signed) Boré; Pedro Bertonière; Marie Choffert, Widow Carrière; G. Guignan. Before Rafael Perdomo.

The taking of the inventory is resumed in the presence of the same officials and parties as above. The first item mentioned is:

An English Negro named Beli, aged 11 years	300	Pesos.
A Negress, Susana, aged 40, born in this Province	300	
An English Negress, Salie, aged 40 years	350	

A Negress named Margarita, aged 35 years, with her two children, Manon aged 4 and Feliciana aged 1 year and 2 months, all three valued at..... 680
1 trunk, half used, valued at..... 4
1 gold watch with its pinchbeck chain..... 35
5 suits of clothes, much worn..... 15
1 crimson taffeta suit, 1 vest, and 2 pairs of trousers of the same..... 16
12 shirts, most of them half worn..... 15
9 very old white vests..... 8
5 pairs of very badly worn white trousers..... 3
9 pairs of old trousers..... 5
5 pairs of white cotton trousers, very badly worn 3
4 pairs of very old drawers..... 1
6 white cotton vests, less than half worn..... 5 – 4

The inventory is suspended and resumed on September 4th, with the following entry:

10 pairs of old thread stockings..... 5

Entered in the inventory is an acknowledgment signed by Jason Lorens, by which he obligates himself to deliver to Mr. Chicu, in France, 5 bales of pelts with 1 cask and 1 small bale, marked Nos. 1 to 7. Said acknowledgment is dated April 26 of the present year, shipped on the frigate, the Governor Atiro, rubricated ..... No. 1

A letter to Widow Maria Sofe, from Pedro Villioz, dated Port au Prince, June 25th of this year, in which the writer acknowledges to have a certain sum of money and some tobacco belonging to her late husband, rubricated ..... No. 2

A house in this city, on Royal Street, at the corner of St. Louis, built on a lot of ground measuring 60 feet front. The said house is constructed of brick between beams and covered with shingles. It is in good condition and valued at.....3500 Pesos

The taking of the inventory is suspended and resumed on September 6th, with an entry reading:

Mrs. Carrière declares that her late husband owed Josef Lebreton two hundred hard pesos..... 200

A second declaration to the effect that Mr. Carrière owed Alexandro Arran..... 200

In the same terms the widow declares her husband owed Julian Podra (Poydras) five hundred pesos in paper money..... 500

She also declares Mr. Carrière had 635 pesos 5 reales in the trunk he took with him, but the Captain of the bilander upon which he was sailing when he died has not drawn up a receipt for this sum, nor made

any statement to show for it, nor for 5 casks of tobacco rappee, weighing 2500 pounds, mentioned in the letter inventoried. The tobacco was sold, and the price it brought together with the money amounts to.....6357

This ends the inventory, since there was nothing further to list. All items included therein are deposited with Mrs. Carrière, who acknowledges to have received them and gives a formal receipt for same. (Signed) Boré; Pedro Bertonière; Maria Choffert, Widow Carrière; G. Guignan. Before Rafael Perdomo.

Pedro Bertonière petitions to have the widow questioned about other property.

Pedro Bertonière petitions to say that the inventory and appraisement of the estate of the late Mr. Carrière have been finished, in consideration of which and so that he may not at any future time be held accountable, by reason of his office, he prays the Court to order the widow, under oath and without delay, to declare whether she knows of any other property belonging to this succession, and done deliver her deposition to him. Alcalde Boré rules: Let Widow Carrière swear and declare as requested, the taking of her deposition to be entrusted to the Escribano, and done deliver her deposition to the Curator of the minors.

Mrs. Carrière's declaration.

In the city of New Orleans on the said day, month and year (September 6, 1784), the Escribano, pursuant to the foregoing decree, went to the dwelling house of Maria Sofe, widow of Juan Carrière, and upon arriving there received her oath, under charge of which she promised to speak the truth, and when examined upon the tenor of the foregoing written petition she said she knew nothing of any property left by her late husband other than what has been inventoried, and in case anything else should be discovered she will present what may be found in this Court. She answered that the above is the truth under charge of her oath, she is 40 years old, and she signed, to which the Escribano attests.

Pedro Bertonière petitions for a certified copy of Mrs. Carrière's representation.

The Curator of the minors sets forth it has come to his knowledge that a ship has arrived in this Port with a cargo belonging to the late Mr. Carrière, therefore, and in consequence of this and so as to promote what corresponds to the rights of his minors, may it please the Court to order the present Escribano to give him a certified copy of the representation made by Maria Chofert, Widow Carrière, to unload the said boat, as also the bill of lading presented and all proceedings instituted in continuation. Etienne Boré rules: As it is prayed.

The certified copy of the proceedings that have been requested.

In the city of New Orleans on October 16, 1784, Messrs. Juan Ventura Morales, Acting Accountant of the Army and Royal Treasury of this Province, and Josef de Villavaso, Administrator General of the same Office, accompanied by the undersigned Notary Public, went on board the Brigantine, Sociadad, anchored beside the bank of the River where the above-named gentlemen went to make an examination. They caused the Captain to appear before them, who took oath before the Escribano and promised to speak the truth. He stated that his name is Nicolas Crespin. The following questions were put to him:

What is the name of his ship, from what port did he sail, what dispatches and cargo did he bring, did he land anywhere, or did anyone die during the voyage?

He answered his brigantine is named the Sociadad. They cleared from Guarico on August 29th of the current year, with dispatches and invoices for this city. The cargo he brought and the names of the consignees may be obtained from these invoices. He did not stop at any port, nor has any person died on board during the voyage.

Questioned whether he brought any cargo other than is listed in the invoices, or any passengers without a permit?

He said he did not bring anything more than appears in his manifest, nor did he carry any passengers without a permit. He brought 6 passengers, as the said manifest and passports show, namely: Pedro Suby and his wife, Maria Pardeau, Juan Vivio, Pedro Portal, Francisco Chevalier and Estevan Revor.

At this point the gentlemen conducting this investigation ordered the Sergeant of the Guard to come on board and to go down into the hold of the ship and that no obstacles must be placed in his way. He reported that he did not meet with any difficulty during his inspection. With this examination the proceeding was finished. The Captain said what he has declared is the truth under charge of his oath, he is 36 years of age, and he signed together with the Accountant and Administrator. The Escribano attests to all of the abovestated. (Signed) Juan Ventura Morales; Josef Villavaso; Nicolas Crespin. Before Rafael Perdomo, Notary Public and Clerk of the Royal Treasury.

Petition.

Addressed to the Intendant General. Maria, Widow of Juan Carrière, petitions to say that she is the owner of the Sociadad, Nicolas Crespin, Captain, which has just arrived from Guarico. She prays His Lordship to grant her a permit to discharge the cargo the brigantine has brought. New Orleans, October 18, 1784. (Signed) Widow Carrière.

Decree.

New Orleans, October 18, 1784. Let the cargo of this ship be discharged, with the cognizance of the Administrator of Revenues so that he may deduct all Royal duties. (Signed) Navarro.

Decree.

New Orleans, October 18, 1784. Let the interested party go to the Clerk of Registration with the invoice, where a copy will be made of it, and upon delivering the original to the General Administration of Revenues, permission will be given to discharge the cargo. (Signed) Villavaso.

Invoice of the cargo belonging to Widow Carrière.

Invoice of the cargo, belonging to Widow Carrière, brought to this city in the brigantine Sociadad, Nicolas Crespin, Captain, which arrived from French Santo Domingo (Haiti), namely:

2 boxes marked in the margin, containing several games for children, according to the note that has been presented for the said effects.

1 bale containing 50 pieces of printed calico from Provence, each piece measuring 10 ells. In the said bale there are 7 pieces of ordinary yarn handkerchiefs.

J B. Another bale containing the following:

18 half pieces of Holland Batiste, each half piece containing 6 ells.
6 pieces of Port nankeen.
12 pieces of Silesian linen, of 14 ells each.
6 pieces of lawn.
30 dozen Cholet handkerchiefs.
39 dozen Silesia handkerchiefs.
28 handkerchiefs of other qualities.
8 dozen Bearn handkerchiefs.
8 pieces of Royal (linen) containing 132 ells.
1 bale containing the following:
4 pieces of linen sheeting measuring 118 ells.
21 dozen table napkins, 1 piece of stuff for tablecloths.
5 pieces of heavy linen containing 80 ells.
1 trunk which contains the following:
50 pairs of drawers.
5 pieces of cotton and silk net measuring 40 ells.
21 pieces of different colored taffeta silk containing 200 ells.
11 pieces of Flanders cloth measuring 200 ells.
11 pieces of different colored smooth cloth, containing 100 ells.
24 figured taffeta vests.
8 pieces of cotton and silk stuff measuring 60 ells.

5 pieces of plain taffeta containing 40 ells.
3 pieces of muslin, each piece containing 18 ells.
4 half pieces of Holland batiste, each half piece containing 6 ells.
7 pieces of cotton and silk striped material for men's suits, containing 100 ells.
1 box containing the following:
1 dozen parasols.
1 dozen hats for Negroes.
1 box which contains the following:

PF
MC
#1 } 37 pieces of cotton velvet containing 108 ells.

C#2 } 1 package of chocolate weighing 75 pounds.

RF
C } 13 cases of red wine, 20 bottles to the case.

1 case containing 48 little jars of sweets.
No Mark. 1 bale containing 4 pieces of canvas, measuring 208 ells.
2 bales of homespun containing 563 ells.
44 casks of red wine.
40 cases of red wine, 12 bottles to the case.
JB 44 cases of white wine.
34 cases of 24 bottles.
10 of the same of 12 bottles each.
44 boxes.
20 casks of rum.
40 large baskets of anisette.
82 of the said in 2 casks.
24 boxes of anchovies.
10 cases of ordinary chinaware, containing 200 dozen plates.
4 cases of olives and cucumbers.
3 of the same in brandy.
1 barrel of salt pork.
2 barrels of powder weighing 443 pounds.
40 boxes of prunes.
14 the same.
3 boxes of tallow candles.
1 box of medicines.
1 box of cologne water.
2 boxes of notions.
4 casks of rum for the crew.

Mrs. Carrière certifies that the above invoice is true and correct in all its parts. New Orleans, October 18, 1784.

Effects belonging to Pedro Labie who has come to settle in this city but who has had to remain in Santo Domingo because of illness. He shipped the following cargo on board the Sociadad, Nicolas Crespin, Master.

8 cases of red wine, 30 bottles to the case.
1 box of paper.
½ cask of white wine.
6 demijohns of red wine.
2 large baskets of French brandy.
7 of the same and the remainder in small baskets.
1 trunk containing 30 hats.
4 trunks of clothes.
1 bag also containing clothes.
2 stills.

Nicolas Crespin certifies that the statement of the above effects is true and correct in all its contents. New Orleans, October 18, 1784.

The above copy conforms to its original and has been drawn up and sent to Rafael Perdomo's Office by the General Administration of Revenues of this Province, to which he refers, and in fulfillment of the foregoing decree he gives the above on 15 sheets of common paper, stamped paper not being in use in this Province. New Orleans, October 25, 1784.

Cross and Flourish. In testimony of the truth. (Signed) Rafael Perdomo.

Rights to taxation.

Pedro Bertonière petitions to have declaration made by the Captain and Quartermaster of the brigantine.

The Curator petitions to say that in order to enable him to establish the rights of his minors, may it please the Court to have Nicolas Crespin, Captain of the Sociadad, anchored in this Port, and also his Quartermaster, under oath and without delay, to declare as to the ownership of the brigantine and her cargo, and done deliver their depositions to him. Alcalde Boré rules: Let the abovenamed swear and declare as requested, the taking of their depositions to be entrusted to the Escribano, and done deliver them to the petitioner.

First declaration.

In the city of New Orleans, on October 30, 1784, before the undersigned Escribano appeared Nicolas Crespin, Captain of the Sociadad, and in virtue of the commission conferred upon the former, by the foregoing decree, he received the latter's oath taken by God and the Cross, according to law, under charge of which he promised to speak the truth, and being examined upon the principal request made in the above-written petition, he said he did not know whether the brigantine under his command and the cargo she brought belong to Maria Chofe, widow of Juan Car-

rière, because Mr. Olasaber, the shipper of the cargo, who talked to him in the city of Guarico when he agreed to come as Captain, did not inform him of the name of the legitimate owner of the brigantine, and he did not request this information as it was not his affair. What he has answered is the truth under charge of his oath, he is 36 years of age, and he signed, to which the Escribano attests.

Second declaration.

Immediately after, the Escribano went on board the Sociadad, where he found Francisco Carona, Quartermaster, and upon administering the oath to him, he declared that when he talked with Captain Crespin, relative to accepting the place already mentioned, he did not ask the name of the owner of the ship and cargo because he did not need to know. What he has answered is the truth under charge of his oath. He is 34 years of age, and he did not sign, as he said he did not know how to write.

Pedro Bertonière petitions to summon Beltran Lasava.

The Curator sets forth that in order to present better proofs of the rights of his minors, as well as to give evidence to counteract the Captains denial of any knowledge concerning the ownership of the Sociadad, may it please the Court to summon Beltran Lasava to swear in due form of law, subject to its penalty, and under charge of the said oath to declare whether or not the brigantine and its cargo belongs to the estate of the late Mr. Carrière, and done deliver his deposition to the petitioner to promote what is legal. Alcalde Boré rules: Let the above-named swear and declare as requested, the taking of the deposition to be entrusted to the Escribano, and done deliver it to Mr. Bertonière.

Declaration.

In the city of New Orleans, on November 23, 1784, in virtue of the foregoing decree, the Escribano went to Beltran Lasava's house to take his deposition as decreed. Oath was administered, and then the said Mr. Lasava declared that in accordance with a permit which Juan Carrière obtained from the Intendant General of this Province, dated September 18, 1783, to buy a consignment of freight in Bordeaux for shipment to New Orleans, with funds from an inheritance in the former city, the witness was commissioned for this purpose, made the voyage to France, and when he arrived in Bordeaux took most active steps to obtain the funds already mentioned. He did not succeed, however, because the estate was in litigation and he knew it would cause great prejudice to demand money before the case was finished. He determined to go to Guarico to buy a brigantine from his own private purse, as in fact he did, with the intention to consider that Mr. Carrière had a one-half interest in the cargo because of the friendship existing between them and the confidence they placed in each other. When he arrived in this Port with ship and cargo,

with the passport and permit issued by the Intendant to his friend, he determined to turn over one-half the profits to Mrs. Maria Sofe Carrière. He proposed to her, if she was willing to continue in the partnership, he of his own free will and as a service to her late husband would consider her as a half-owner in the consignment he had purchased at Mr. Carrière's request. The widow answered that she did not have sufficient money from the estate to carry on such a partnership, nor did she have funds enough to reimburse him for the capital he had invested in the transaction, as her one-half share. For this reason and because he had informed the widow that he had been unable to collect the inheritance in Bordeaux, belonging to Mr. Carrière, neither the ship nor the cargo was bought with their money, as the Curator seems to think. Mrs. Carrière withdrew from said transaction, leaving the witness in quiet and peaceful possession of his interests as the true owner of both ship and cargo. He declared that what he has stated is the truth under charge of his oath, he is 29 years of age, and he signed, to which the Escribano attests. (Signed) Lassabe.

Pedro Bertonière petitions to discontinue proceedings to ascertain the ownership of the "Sociadad" and her cargo.

The Curator, in another petition, alleges that as a result of the deposition given to discover whether or not the ship and cargo brought to this Port by Nicolas Crespin was a part of the late Mr. Carrière's estate, it has been proven that both belong to Bernardo (Beltran) Lasava. Therefore, so as not to embarrass the course of the principal case, may it please the Court to declare this evidence as unnecessary and order the records delivered to him so that he may represent what corresponds to the rights of his minors. Alcalde Boré receives this petition and on November 29th decrees: Whereas, attentive to

Decree.

the representation of the Curator of the minors and the testimony produced for him, let Mr. Lasava's deposition be declared of no value nor effect, and deliver to him the records in accordance with what he has requested.

Mr. Bertonière petitions the Court to approve the inventory.

The Curator sets forth that the records have been delivered to him to promote what corresponds to the rights of his minors, and to this effect he prays the Court to approve the inventory and appraisement of the Carrière estate, considering that no property exists other than what appears in the said inventory, as may be proven from the declaration on page 27. The Court rules to send the above petition to Mrs. Carrière.

Mrs. Carrière answers.

Maria Sofe, Widow Carrière, answers, saying that the Curator's foregoing petition, by which he asks the approval of the inventory and appraisement of her husband's estate, has been delivered to

her; she offers no objections and prays the Court to accede to his request. Alcalde Boré receives this petition and on November 15 (?) (December 15) decrees: Whereas, with the consent of both parties let the inventory and appraisement made of the estate left by Juan Carrière be approved, and in consequence whereof His Honor condemns and does condemn them to abide by it, and to this effect he interposes and does interpose his authority and judicial decree inasmuch as it has place in law.

Decree.

Pedro Bertonière petitions for the records of the case.

The Curator petitions to say that as the inventory has been approved, therefore, in order to promote what corresponds to the rights of his minors, he prays the Court to deliver the records of the Court to him. Alcalde Boré rules: Let the records be delivered to the petitioner in the customary way.

The Curator petitions to sell the Carrière property.

Pedro Bertonière states that the records of the case have been delivered to him to promote what corresponds to the rights of his minors, and to accomplish this purpose he prays it may please the Court to order all property already inventoried sold at public auction, after the public calls for the sale have been given as the law requires. The Court rules to send this petition to the widow.

Maria Choffert answers, asking to have the estate adjudicated to her.

On January 10, 1785, Widow Carrière answers, setting forth that, pursuant to the decree rendered, the inventory and appraisement made of her late husband's estate was approved with the consent of the interested parties. It is her wish to preserve the estate and also to avoid the expenses and waste that would result from a judicial sale which would be much to the disadvantage of her children and herself, as it is generally known that if the sale was held now it would be impossible for her to support them from the revenue derived from the small part that would go to each one after the sale was made. This may be proven from the inventory of the said estate. Therefore she prays the Court to consider what she has stated and the rest of the difficulties that beset a poor widow who naturally wishes nothing more than the well-being of her children, and to adjudicate to her, at the price of its valuation and under legal formalities, all the property left by her late husband, listed in the inventory from page 12 to page 25, inclusive. Alcalde Renato Huchet de Kernion, into whose Court the case has passed, rules: Let this petition be sent to the Curator of the minors.

Pedro Bertonière answers, giving his consent.

The Curator answers that after carefully examining the widow's reasons for asking to have the estate adjudicated to her at the price of its valuation, and consider-

ing that Mrs. Carrière is a good mother, who will be certain to increase the value of the property, he offers no objections to the adjudication, provided she gives full and sufficient bond for the shares that belong to each one of the minors. Alcalde Kernion accepts this petition and on January 12, 1785, decrees: Whereas,

Decree.

adjudicate to Maria Choffert, widow of Juan Carrière, all the property left by her late husband, at the price of its valuation, provided she makes herself responsible to her children for the shares that should go to them from their father's estate.

Pedro Bertonière again asks to have the widow give bond.

The Curator alleges that in a previous petition he requested to have Mrs. Carrière give bond for the shares that should go to each one of her minor children before adjudicating the estate to her. And whereas the Court has ordered the property turned over to the widow, although she has not executed the bond, may it please the Court to decree that Maria Choffert must do so within a short space of time. Alcalde de Kernion receives this petition on January 24, 1785,

Decree.

decrees: Whereas, attentive to the representation made by Mr. Bertonière, notify Maria Choffert to give the bond he has requested. Let a copy of it be placed at the end of this proceeding so that it may have the desired legal effect, and done deliver her bond to the Curator, who may then promote what is convenient to the rights of his minors.

Certified copy of the bond.

In the city of New Orleans, on February 3, 1785, before the Escribano and witnesses, appeared Joseph Lebreton, resident of this city, known to the said Escribano, and he said: That pursuant to a decree rendered to the petition presented by the Curator of the minor Carrière children, dated January 24, 1785, Maria Choffert, widow of the deceased, was ordered to give the necessary bond to cover the sum of 3731 pesos, current money, the full amount of the minors' paternal estates, as appears from the inventory and valuation of same, but before carrying this adjudication into effect and placing the property in her charge, she has asked Mr. Joseph Lebreton to act as her bondsman. He acceded to her request and for this purpose he constitutes himself her surety, in due and legal form, and makes himself responsible for all that belongs to the said minors. For the security and fulfillment of all he has related, he obligates his present and future estates and gives the power to the Justices of His Majesty that for causes that can and must come before them to compel him to the fulfillment of it with the rigor of a sentence consented to and passed in the authority of a thing adjudged. He renounces the laws in his favor, with the general in the form that prohibits it. In testimony whereof he executes and signs,

the witnesses being Francisco Carcasses and Manuel Monrroy, here present. Signed in the original by the two witnesses, Joseph Lebreton Dorgenois and Rafael Perdomo.

Pedro Bertonière petitions asking to have the widow give her account and sworn statement.

The Curator avers that the records of the case have been given to him to promote what belongs to the rights of his minors, and reducing his demand to plain facts he prays the Court to order Maria Choffert to give an account and sworn statement of the estate left by her late husband. Alcalde de Kernion decrees: Let Maria Choffert, Widow Carrière, be notified that within 15 days she must present an account and sworn statement of the estate left by her late husband, as the Curator of the minors has requested.

The Account and Sworn Statement.

The account and Sworn Statement produced by Maria Choffert, Widow of Juan Carrière, of the property left at his death that has been adjudicated to her by decree on page 64.

ASSETS.

Article 1

The first entry is the sum of 1245 pesos for the effects and movables belonging to the Carrière Succession, as appears from the inventory and appraisement in the records of this case from page 13 to the reverse side of page 15.....1245 Pesos

Article 2

There is also entered the sum of 115 pesos, the full amount of the articles and effects belonging to the said succession inventoried from page 17 to page 20..... 115

Article 3

A further entry of 500 pesos the full amount of the appraisement of the Negro Cupidon, belonging to the estate, inventoried on page 15..... 500

Article 4

An entry of 450 pesos, the valuation of the Negro Scipion, belonging to the succession as inventoried on page 15..... 450

Article 5

An entry of 100 pesos, the value of a Negro named Nago, inventoried on page 16..... 100

Article 6

A further entry of 300 pesos, the value of Beby, inventoried on page 16..... 300

Article 7

An entry of 300 pesos, the appraised value of Susana, inventoried on page 16..... 300

Article 8

An entry of 350 pesos, the value of another Negress, inventoried on page 17..... 350

Article 9

Another entry of 680 pesos, the appraised value of a Negress Marguerita and her two children, inventoried on page 17..... 680

Article 10

A final entry of 3500 pesos, the value of the house belonging to the estate, inventoried on page 22.....3500

7540

DEBIT.

Article 1

Firstly there is entered in the debit the sum of 4 pesos 5 reales, paid to Narcisso de Alba for the rental of 2 seats in a pew in the Parish Church of this city as appears from the receipt duly presented, No. 1..... 4 P. 5 R.

Article 2

Second entry, the sum of 60 pesos, paid to Nicolas Lauves, master shoemaker of this city, for shoes supplied to the Carrière children from time of their father's death up to the present, as appears from the receipt duly presented as No. 2..... 60

Article 3

Third entry, 28 pesos, paid to Dr. Santiago Le Duc, Surgeon, for treatment and medicines given and supplied to the Carrière home, as appears from his receipt, No. 3..... 28

Article 4

Another entry of 21 pesos, paid to Pedro Bidou Herbert, merchant of this city, for the full amount due for a piece of material for mourning for Mrs. Carrière and her family, as appears from his receipt, No. 4..... 21

Article 5

There is also an entry of 133 pesos that Mrs. Carrière paid to Widow Claignac for mourning for herself and children, as appears from the receipt duly presented, No. 5..... 133

Article 6

The sixth entry is for 247 pesos 4 reales, paid to Guillermo Guignan for incidentals necessary for Mrs. Carrière's mourning and that of her family, as appears from the bill also presented, No. 6..... 247 – 4

Article 7

A further entry of 160 pesos that Mrs. Carrière gave to Mr. Lebreton to pay to Santiago Mater (Mather), merchant of this city, a debt her late husband owed, as may be proven from the receipt duly presented, No. 7..... 160

Article 8

The eighth entry is for 149 pesos 5½ reales which she has paid to Juan Andres Reynaud that her husband owed, as appears from the bill duly presented, No. 8..... 149 – 5½

Article 9

An entry of 40 pesos that Mrs. Carrière paid Mr. Richoux, Schoolmaster, for tuition for her children, as may be proven from the receipt duly presented, under numbers from 9 to 18..... 40

Article 10

There is also an entry of 200 pesos, paid to Francisco Josef Lebreton, as appears from his receipt, No. 19..... 200

Article 11

Another entry of 200 pesos, paid to Alexandro Harang, as appears from his receipt duly presented as No. 20. Mrs. Carrière has declared this sum and the foregoing in the inventory on page 24 and its reverse side..... 200

Article 12

There is also an entry of 500 pesos, owed by the late Mr. Carrière to Julian Poydras. The widow declared this debt in the inventory on the reverse side of page 24. She will be called upon to pay it just as soon as he will arrive in this city, and when paid she will file the receipt at the end of this record..... 500

Article 13

There is another entry of 2100 pesos, the full value of a house in Bordeaux acquired from the succession of Mrs. Carrière's parents and sold for the said amount to Pedro Duverges, as appears from a copy of the act of sale, duly presented.....2100

Article 14

An entry of 30 pesos, paid to the person who has drawn up the present account and also for the labor of examining the inventory, papers and documents..... 30

The full amount of the debit.....3873 – 6½

RECAPITULATION

Assets	7540
Charges and deductions	3873 – 6½
Remainder	3666 – 1½

Whereas: The assets amount to seven thousand and five hundred and forty pesos and the debit to three thousand eight and seventy-three pesos six and a half reales, thus leaving a remainder of three thousand six hundred and sixty-six pesos one and a half reales, the one-half of which belongs to Mrs. Carrière as her community property, the latter swears by God and the Cross, according to law, that this account and sworn statement is well and faithfully made, save errors or omission.

Note.

Considering that Mrs. Carrière has no assurance of what the consignment of freight brought, that her husband shipped to France, mentioned in the bill of lading (acknowledgment) inventoried on the reverse side of page 20, No. 1, nor of what is stated in the letter from Pedro Villeur, inventoried on page 21, No. 2, she includes these two items by note, only, until such time as more and fuller information reaches her of the actual amount existing, realized from these two sources. When she does obtain this information she will give an account of these assets to the Court. (Signed) Widow Carrière.

Vouchers. No. 1. 1784 Dec. 31. Mrs. Carrière owes Narcisse Alva 4 piastres, 5 escalins for the rental of 2 places in a pew for 6 months, which the said Mr. Narcisse has paid. Received payment. (Signed) Alva.

No. 2. Received from Mrs. Carrière, since her husband's death, 60 piastres for large and small shoes. New Orleans, February 12, 1785. (Signed) N. Lauve.

No. 3. Mrs. Carrière owes 28 piastres for treatment for illnesses and medicines furnished to her house from the 11th of last May up to today. New Orleans, February 15, 1785. Received payment. (Signed) Le Duc.

No. 4. In duplicate, the first having been lost. I have received from Mrs. Carrière 21 piastres for a piece of material sold and delivered to her on the 2nd of last September. New Orleans, February 11, 1785. (Signed) Pierre Bidou Herbert.

No. 5. Mrs. Carrière owes Mrs. Blegnat as follows:

50 ells of black voile at 2 piastres	100
6 ells of crepe at 1 piastre 4 escalins	9
12 ells of batiste at 2 piastres	24
	133

Paid New Orleans, January 6, 1785. (Signed) Widow de Blaignat.

No. 6. Mrs. Carrière owes Mr. Gignanta as follows:

36 ells of black taffeta at 3 pesos	108
15 ells of toile du nord at 2 pesos 4 reales	37 – 4
10 pieces of fine linen at 6 pesos	60
21 ells of royal linen at 2 pesos	42
	247 – 4

Paid New Orleans, September 15, 1784. (Signed) G. Guignan.

No. 8. I certify that in closing the account with Mr. Le Breton on July 9, 1784, he paid 160 piastres to Mr. Mather, due on the late Mr. Carrière's note for 7 hogsheads of tobacco sold and delivered to him before his death.

New Orleans, February 12, 1784. Acting for Mr. Mather. (Signed) Charles Norwood.

No. 8. Mr. Carrière owes Andres Reynaud as follows:

2 pieces of pine wood, 6/7 by 20	40	70 pieces at 6 S – 21 Rs.	
1 " 7 by 18	18		
1 " 7 " 19	19		
1 " 7 " 5/6	20	158 pieces at 5 – 39 – 10	
1 " 7 " (other dimension not given)	12		
3 " 7 " 9	27		
9 " 7 " 9	81		
1 " 7 " (last dimension not given)	18		
2 " 7 " 7/8	14 at 7		4 –18
17 beams 4/8 by 9	153 at 4		30 –12
1 barrel of rice			7 –10
2½	12 – 10		25 –
16 pieces of wax	1 – 11 – 2		25 –
2 barrels of rice	25 –		50 –
6500 whole bricks	50 the 100		395 –
1900 half bricks	25 the 100		247 –10
For the bilge of a ship			70 –
For the amount that Mr. Carrière must be accountable to Mr. Reynaud for the free Negro named Charles, built his house			70
			916

CREDIT.

For a half barrel of wine....150 –	}	167 –10
For money lent..... 17 –10	}	
		784 –10

Bill receipted at New Orleans, February 6, 1785. (Signed) A. Reynaud.

No. 9. A certified copy of an act of sale by which Maria Choffert, wife of Juan Carrière, with his full consent, sells to Pedro Duverges and his wife, Theresa Lebrun, both about to leave for France, a house in Bordeaux, on St. Martin Street, at the corner of Estanque Alley, in the St. Surren District, having a frontage of from 16 to 20 feet on the former and 35 or 40 feet depth on the latter. The house, on the lower floor, is divided into one large parlor with a small room in the rear giving out on a little courtyard. This parlor has a chimney, 2 doors and 2 windows, one fronting on St. Martin Street and the other on Estanque Alley. At the side of the latter, in a corner of the said parlor, is a wooden partition to conceal the stairway and trap door to the cellar, which is the same size as the parlor and adjoining room. There is another entrance on the said steps, higher than the one to the cellar, leading to the second story that contains a large room, a smaller one and a gallery where several latrines are located. The upper room has a chimney and three windows, one to give light on the stairs, one in the front wall overlooking St. Martin Street and the third facing Estanque Alley. There is also a closet built into the wall. Over the large room is another serving to store firewood and is entered by means of a hand ladder. Next to the patio is a cellar, or basement, having an entrance on it and a window on Estanque Alley. Above the cellar are two rooms with entrances on the Alley and a stairway leading to a small platform beyond which are closed-in latrines. At the right and left of this said platform are two steps to mount to the said rooms, each having a chimney and a board floor and ceiling. One of them has two windows giving out on St. Martin Street and the Alley, respectively. The second room has no exit, except through the other room, and receives its light from St. Martin Street. At the side of the cellar and joined to it is another small room with a chimney and exit on the Alley. These buildings are stone and roofed with tiles.

Everything is sold with entrances, exits, uses, customs, right-of-way and all other appurtenances that belong or may belong to it by act and right, free of tribute, lien, mortgage, or other charge, domination and special or general obligation, until the purchasers have been put into possession, because, if afterwards

there should be any feudal taxes, ground rent, etc., imposed upon the said real property, it must be paid by the purchasers and not the vendors. Mrs. Carrière reserves to herself the right to collect the rent from the house until the day the vendees have taken it over. What Mr. and Mrs. Duverges will give in payment will be stated further on and not until they vacate the house which they propose to convey as a part of the purchase price which will be set forth in a written act to be drawn up between the two sets of contracting parties. After that the rent from the Bordeaux property will belong to the vendees. It is also stipulated that if, before the purchasers have completed the transaction, the house should fall down, be destroyed by fire, or some other accident happen, the loss will be sustained by Mrs. Carrière up to the sum of 6000 livres, as agreed upon, and 4500 by the purchasers, which is the full value of the house, payment for which has been made in New Orleans.

These are the conditions under which Mrs. Carrière sells the house in Bordeaux that belongs to her by inheritance from her late father, Santiago Choffert, for the price of 10500 livres in French money. Of this amount the purchasers have paid 2500 livres in hard Mexican pesos, 3500 livres in furniture, and the remaining 4500 livres have been paid with a house transferred to the vendor, which she acknowledges to have received and renounces the laws of non numerata pecunia and proof of delivery. She further grants a receipt in due form and declares that the 10500 livres is the just price for the said house, as has already been stated. The vendor makes a concession and donation pure, perfect and complete, to the vendees with insinuation, and renounces the Royal Ordinance passed in the Cortes of Alcala de Henares which treats of what is bought, sold and exchanged for more, or less, than the one-half of its just price and the four years to rectify the mistake if one has been made, and all other laws with bearing upon the subject, and from this day forth she desists, withdraws and dispossesses herself from all ownership, title, voice, recourse and other rights that belong to her in the said house, all of which she cedes, renounces and transfers to Pedro Duverges and his wife, Theresa Anna Lebrun, who will succeed to her rights, and she gives to them the power required so that they may enter the said house judicially, acquire and take possession of it. In the interim she constitutes herself its lessee, holder and possessor and leaves it to them to put in the date of payment, as they may find convenient, in the written instrument of sale that has been drawn up before the undersigned Escribano, this 11th day of August, 1769. And Juan Carrière, here present, grants permission to his wife, by power of attorney, to effect this sale and purchase (New Orleans property) which he approves and confirms in all its contents by the first written act of sale, dated August 11, 1769, these presents being for greater security, only. Mr. and Mrs. Carrière obligate themselves, jointly

and in common, to the eviction and guarantee of this sale from any dispute or difference that might arise, or any law suit that might be instituted, even though a publication of proofs has been made, and in that case Mr. and Mrs. Carrière and their heirs will come to their defense and will prosecute all suits until their conclusion and every opposition overcome, at their cost, and Mr. and Mrs. Duverges are left in peaceful possession. And if the purchasers do not fulfill the requirements of the sale, because they do not wish to, or are not able to do so, then the vendors will return the 10500 livres that have been paid to them and will become responsible for all work done, any arguments that may have been drawn up, for damages, costs, or increase in value the real property may have acquired in the course of time, and swear to assume, immediately and without other proofs of which the vendees are relieved, although the law requires it. And for all of the abovesaid they obligate their persons and present and future estates, and they give the power to the Justices of His Majesty to force them to carry out these conditions as by sentence passed as a thing adjudged and consented to by them, and they renounce, in due form, any laws in their favor.

Pedro Duverges and his wife, Theresa Lebrun, to whom he gives permission and ample authority for this sale, being here present they accept this written act in all, for all, and according to and as it has been related, and they receive the house mentioned in this act as and in conformity to the first written one, dated August 11, 1769, approved and confirmed by this, and for which they obligate themselves in common and jointly, one speaking for the other, to pay the feudal taxes and ground rent, if any be due, from the day possession is taken and for the future until such time as they pay off and retire the principal, without calling upon the vendors to answer for same, and if such taxes are demanded then the vendees must assume them as the real owners, and they swear to pay, without delay, all costs of collection as well as the 4500 livres, the final payment on the said house.

They acknowledge to sell, cede and transfer to Juan Carrière and his wife, Maria Choffert, a plot of ground measuring 60 feet front by 120 deep, containing a house built of brick between wood (wooden posts), divided into a hall and 4 rooms, with a basement. One room has a chimney. The house is double boarded and covered with a shingle roof and has windows and doors closed with keys. There is a building in the courtyard containing a brick oven. The above-mentioned house is situated in this city at the corner of Delphina (Dauphine) and St. Philip, and is free of all liens, seignorial tribute, or mortgage, so that by this deed of transfer Juan Carrière and his wife may enjoy, sell, or alienate the house at their will. Mr. and Mrs. Duverges renounce in their favor all real and personal action, dominion, ownership and seignorial right and anything else that belongs

to them in the said house, declaring that 4500 livres is the just value of the ground plot and house, which was made evident to Mr. and Mrs. Carrière, who have seen and examined both and acknowledged to have received this real property. They obligate themselves to the eviction, security and guarantee of this transfer with their persons and present and future estates, and renounce the abovesaid Royal Ordinance and other laws in their favor, and give the power to the Justices so that they may compel them as by sentence definitively passed as a thing adjudged and consented to by them. In testimony whereof all parties execute the present in New Orleans, April 4, 1771, which they sign, the witnesses being Francisco Goudeau, Luis Lioteaud and Esteban de Quiñones, here present. (Signed) Maria Chofert, wife of Carrière; J. Carrière; Duverges; Theresa Anna Lebrun Duverges. Before Juan B. Garic, Notary Public.

Certification.

I certify that up to today no mortgage has been recorded against the lot sold in the foregoing written act of sale. New Orleans, April 4, 1771. (Signed) Garic, Annotator.

The above conforms to the original, executed before me, which remains in my keeping and Archives, and to which I refer, and upon the request of the party I give the present in New Orleans, April 6, 1771. Cross and Flourish. In testimony of the Truth. (Signed) Juan B. Garic, Notary Public.

Maria Choffert petitions to present the foregoing account and sworn statement.

Mrs. Carrière petitions, stating that by the foregoing decree she was ordered to give an account and sworn statement of the estate left by her late husband within 15 days, therefore to comply with the said decree she presents the attached papers and prays the Court to receive them and to rule that all parties must abide by her accounting. Alcalde Kernion decrees: The account having been presented, let it be sent to the Curator of the minors.

Contestation of the Account presented by Mrs. Carrière.

Contestation made by Pedro Bertonière, Public Attorney and Curator ad lites of the minor children left by Juan Carrière, to the accounting presented by Maria Chofert, his widow, of the estate left by the deceased at his death.

CREDIT.

The credit consists of 10 articles amounting to 7540 pesos is the same as presented by Mrs. Carrière.

The Debit contains 14 articles and is slightly different:

No. 1. Pew Rent ..... 4 – 5
No. 2. Bill paid to Nicolas Lauve for shoes..... 60 –
No. 3. Bill paid to Dr. Leduc for medical services ..... 28 –

No. 4.	Bill paid to Pedro Bidou for dress goods..	21 –	
No. 5.	Bill paid to Mrs. Blaignac for mourning..	133 –	
No. 6.	Bill paid to Guillermo Guignac for merchandise	247 –	4
No. 7.	A debt owed by Mr. Carrière to Santiago Mather	160 –	
No. 8.	A debt due Andres Reynaud by Mr. Carrière	149 –	5½
No. 9.	Paid to Mr. Richu, the schoolmaster	40 –	
No. 10.	Paid to Joseph Francisco Lebreton	200 –	
No. 11.	Paid to Alexandro Aran	200 –	
No. 12.	Paid to Julian Poidras (Poydras)	500 –	
No. 13.	Due Mrs. Carrière for her house in Bordreaux, sold Mr. Pedro Duverje	2100 –	
No. 14.	Paid for drawing up this account	30 –	
No. 15.	An additional 30 pesos paid for a taxation of costs and for Mr. Bertonière's labor to draw up the contestation and revision of the documents presented by Mrs. Carrière and an examination of the inventory	30 –	
	Full amount of the debit	3903 –	6½

RESUMEN.

Credit	7540	
Debit	3903 –	6½
Remainder	3636 –	1½

According to this accounting there is a remainder of 3636 pesos 1½ reales, from which sum the costs of the proceedings must be deducted before the schedule for partition of this estate can be drawn up.

NOTE.

Mrs. Carrière must credit the funds mentioned in the articles inventoried on the reverse side of page 20, as well as those included in Pedro Villeur's letter entered on page 25, and render an account of them to the Court, immediately, so that the remittance of these sums may be verified and the part that will go to each one of the minors set forth.

Pedro Bertonière petitions to present his contestation.

The Curator of the minors states that in answer to Mrs. Carrière's account and sworn statement he presents his contestation of same, which he prays to have admitted and that all parties be condemned to abide by it. Alcalde Kernion rules: The account having been presented, let this petition be carried into effect.

Three receipts.

Filed here are three receipts. The first is signed by Francisco Josef Le Breton Dorgenois, who acknowledges to have received from Mrs. Carrière the sum of 200 piastres gourdes that he had lent her husband before he left for France. This receipt is dated New Orleans, February 1, 1785.

The second, also dated New Orleans, February 1, 1785, is signed Alexandro Harang, who acknowledges to have received 200 piastres gourdes, which is the amount he lent Mr. Carrière before his departure for France.

The third, dated New Orleans, March 3, 1785, is signed by Julian Poydras, who acknowledges to have received 100 piastres from Mrs. Carrière, which amount was owed to him by her late husband.

Mrs. Carrière petitions to present the above receipts.

Maria Choffert petitions, averring that when she drew up her account and sworn statement of her late husband's estate, already presented, she failed to give two receipts that had been mislaid and another she could not produce because the creditor was absent from the city in Pointe Coupée, and considering that she has found the former and has obtained the last from Mr. Poydras upon his arrival here, she is able to verify payment on all three and now attaches them to this petition. Therefore she prays it may please the Court to accept them and to order as she has requested in the said account and sworn statement. Alcalde de Kernion rules: The two (three) receipts having been presented, let them be filed with the account and sworn statement. This petition and the receipts must be sent to the Curator of the minors so that upon seeing them he may promote what may be suitable.

Pedro Bertonière accepts the receipts.

Pedro Bertonière sets forth that the receipts Mrs. Carrière has presented are in accordance with what she has stated in her account and sworn statement, therefore he offers no objections to what it may please the Court to declare, and in consequence whereof to determine in conformity to what he has requested in his last petition. Alcalde de Kernion rules: Let it be done as they have prayed. And on April 23, 1785, he decrees: Whereas, with the consent of the parties he approves the account and sworn statement presented by Maria Choffert, widow of Juan Carrière, and in consequence whereof he condemns and does condemn the interested parties to abide by it, and for its greater validation and force he interposes his authority and judicial decree.

Decree.

Maria Choffert petitions for the partition of the estate.

Mrs. Carrière petitions to say that, considering her account and sworn statement has been approved in all its parts, may it please the Court to order it sent to the Judi-

cial Accountant so that he may proceed with the drawing up of the schedule for partition of the said estate. Alcalde de Kernion orders this petition sent to the Curator.

The Curator's answer.

Pedro Bertonière answers to say that he offers no objections to the request made by Mrs. Carrière, and he prays the Court to rule accordingly. Renato de Kernion receives this petition and on April 27, 1785, renders the following decision: Considering the petitions made by the interested parties, let the records of the case be delivered to the Judicial Accountant so that he may make the partition, as requested, after he has accepted and taken oath.

Decree.

Notification, acceptation and oath.

On the said day, month and year (April 27, 1785), the Escribano notified Luis Lioteau, Public Taxer, in person and he said he accepted and did accept and swore by God and the Cross, according to law, to proceed well and faithfully with the accounting and partition that has been ordered, and he signed, to which the Escribano attests. (Signed) Luis Lioteau, before Rafael Perdomo.

Partition.

In the city of New Orleans on April 27, 1785, Luis Lioteau, Judicial Accountant, pursuant to the foregoing decree, divided the estate left by Juan Carrière among Maria Choffert, his widow, and her six children, namely: Maria, Rosa, Sofia, Luis, Zulima and Treville Carrière, and having seen and examined the inventory, decree for adjudication, account and sworn statement, the contestation of it, and all other official documents and decrees that have been rendered and suits prosecuted against this succession, he makes a partition in the following manner:

BODY OF THE ESTATE.

The first entry is the amount realized on the furniture and effects	1245
Second, articles inventoried from pages 17 to 20	115
Third, the appraised value of the slaves	2680
Fourth, the just price of the house and lot	3500
Total	7540

FOR A LIQUIDATION OF THE ESTATE.

First, the debts paid by Mrs. Carrière, according to the receipts presented, must be deducted from the body of the estate, namely:			
	113	– 5	
A further deduction for mourning purchased	380	– 4	
Mr. Carrière's debts, paid by his widow, must also be deducted	309	– 5	
A debt to Mr. Richu, paid by the widow	40		
Three notes, paid by Mrs. Carrière to Messrs. Le Breton, Harang and Poydras	900		
The purchase price of Mrs. Carrière's house, sold to Mr. Duverje	2100		
Paid by the widow to her attorney	30		
The full amount of judicial costs, as appears from the taxation of same	136	– 6	
Total to be deducted	4010	– 4½	

RESUMEN.

The body of the estate	7540	
Amount to be deducted	4010	– 4½
Capital of the said estate	3529	– 3½

There remains, then, 3529 pesos 3½ reales, of which sum Mrs. Carrière receives the one-half, or	1764	– 5	– 25½
Maria Carrière a 1/6 of ½, or	294	–	32½
Rosa Carrière a like amount	294	–	32½
Sophia Carrière	294	–	32½
Luis Carrière	294	–	32½
Zulima Carrière	294	–	32½
Treville Carrière	294	–	32½
Total	3529	– 3½	

The Judicial Accountant has made the partition in this manner and certifies to have executed it well and faithfully, according to his legal knowledge and understanding, and he signed. Dated as above.

Luis Lioteau prays for an adjustment of his fees.

Luis Lioteau petitions to say that in his capacity of Judicial Accountant he has drawn up the schedule for the partition of the Juan Carrière estate and prays the Court to order the present Escribano to adjust fees for the work, which must be paid by the said estate. Alcalde de Kernion rules: As it is prayed.

Decree.

New Orleans, May 12, 1785. Adjust the accounts, lately drawn up by the Judicial Accountant at 30 pesos, with an additional 15 reales for this ruling.

Pedro Bertonière petitions to see the schedule for partition.

Pedro Bertonière petitions to say that the accounting for partition has been verified by the last decree, therefore to promote what may be suitable to the interest of his minors, may it please the Court to order the said accounting sent to him for examination. Renato de Kernion rules: As it is prayed.

The Curator petitions to say he offers no objections to Lioteau's schedule for partition.

Pedro Bertonière petitions to say that the records of the case have been delivered to him to enable him to examine the schedule of the partition of the Carrière estate, and having gone over it carefully he finds that it has been well drawn up and conforms to law, therefore he offers no objections and prays the Court to approve it, and for its greater validation and force to interpose its authority and judicial decree. Alcalde de Kernion receives this petition and on May 12, 1785, decrees: Whereas, with the consent of the parties, His Honor said he must approve and does approve the accounting and partition made of the estate left by Juan Carrière and therefore condemns the said parties to abide by it, and for greater validation and force he interposes and does interpose his authority and judicial decree. (Signed) René Huchet de Kernion.

Decree.

Maria Choffert petitions for a taxation of costs.

Maria Choffert petitions, averring that the account and partition of the Carrière estate having been approved, may it please the Court to order a taxation of the last costs caused in these said proceedings. Alcalde de Kernion rules: As it is prayed.

Notification, acceptation and oath.

On the said day, month and year (May 12, 1785), the Escribano personally notified Luis Lioteau, Public Taxer, who said he accepted and did accept and swore by God and the Cross, according to law, to proceed well and faithfully with the taxation he has been ordered to make. He signed, to which the Escribano attests.

Taxation of costs.

Taxation of costs of the intestate succession of Juan Carrière, in conformity to the last decree and in accordance with the Royal fees due for the said proceedings on 132 sheets of paper.

Gratis. Boré's paraph. To Esteban Boré, late Alcalde Ordinario of this city and its jurisdiction for His Majesty, for 14 half signatures, 7 full and 4 assistances in New Orleans..... 144 Rs.

Signed: de Kernion. To Jean René Huchet de Kernion, Alcalde Ordinario of this city and its jurisdiction for His Majesty, for 13 half signatures and 1 full one..... 30

Perdomo's paraph. To Rafael Perdomo for his fees for recording this case, other duties and assistances..... 392

Received payment. Bertonière's paraph. To Pedro Bertonière, Attorney, for 18 petitions and 4 assistances in the city..... 138

Paraph. To the agent of Maria Josefa Choffert, widow of the late Juan Carrière, 25 reales for 5 petitions..... 25

De La Place. To Appraiser Josef de la Place for 4 assistances in the city..... 44

To Guillermo Guignan for the same..... 44

To the Taxer for this assignment..... 33

{ 854 Rs.
{ 106 Ps. 6 R.

New Orleans, April 27, 1785. (Signed) Luis Lioteau.

Received. Bert(onière). Note: 30 pesos should be paid to Pedro Bertonière for the work he has had to do to draw up the contestation of the accounting presented by Mrs. Carrière, as was set down on page (space left for the number) and approved by the foregoing decree..... 30 P. 6 R.

(136 P. 6 R.

Taxation of the last costs incurred in the intestate proceedings for the settlement of the estate of Juan Carrière, from page 133 to page 147, in conformity to the last decree and in accordance with the Royal tariff of fees.

Signed: de Kernion. To Juan Renato Huchet de Kernion, Alcalde Ordinario of this city and its jurisdiction for His Majesty, for 4 half signatures and 1 full one..... 12 Rs.

Perdomo's paraph. To Escribano Rafael Perdomo for his fees for recording this case and other labors..... 46

Received. Bert(onière's) paraph. To Pedro Bertonière for 2 petitions 10

Received. Paraph. To Luis Lioteau, Judicial Accountant, for his work in drawing up the foregoing partition, adjusted on page 141..... 240

To the same as taxer for this assignment..... 4

317 Rs.
39 Ps. 5 R.

New Orleans, May 12, 1785. (Signed) Luis Lioteau.

August 23.

Succession of Francisco Muñoz. Inventory and Appraisement of his estate.

No. 129. 32 pp.

Court of Alcalde Francisco Maria de Reggio.

No Assessor.

Escribano, Rafael Perdomo.

This case, involving a succession, contains little of interest except the pious donations and dispositions contained in the will of the deceased. It is of interest to note how little property is left by one who had held for some time a rather responsible position under the Spanish colonial government in New Orleans.

In the city of New Orleans, on August 23, 1784, Francisco Maria de Reggio, Alferez Real and Alcalde Ordinario of this city and its jurisdiction for His Majesty, declares: That now at about 6 o'clock in the morning of this day he has been notified of the death of Francisco Muñoz, Warden of the Royal Prison, who has left some property and absent heirs; therefore, in order to place this estate in security, His Honor has drawn up this act to begin the process. The death of the above-said must be made evident by the certification signed by the Escribano, who is hereby given the necessary commission to make a formal collection of any keys that may have been left by the deceased. These must be kept in his possession at the disposition of this Court, and done let both the keys and the certification be brought to Alcalde de Reggio, so that the required decree may be rendered, for thus he has provided, decreed, ordered and signed, to all of which the Escribano attests.

Certification of the death. Pursuant to the foregoing decree, the Escribano certifies that

having gone to the Royal Prison of this city where Francisco Muñoz, its Warden, lived, he saw him in the main room, stretched out upon a bed, to all appearances dead, and as such preparations were made for his funeral. In testimony whereof he sets this down as a matter of record.

Collection of the keys.

Immediately after, the Escribano, in virtue of the commission conferred upon him, asked for the keys left by the deceased. Antonio Ramis, his Testamentary Executor, delivered four to him, and these he maintains in his possession, at the disposition of the Court, and in testimony whereof he sets this down as a matter of record.

Order to search for the will.

New Orleans, August 25, 1784. Let the present Escribano, before whom a will was executed for Francisco Muñoz, place a copy of it at the end of this proceeding. Fernando Rodriguez must also certify whether a later will for the deceased was drawn up before him, or has been deposited in the Archives in his keeping. And so that someone may represent the absent heirs, His Honor names and does name Pedro Bertonière, Public Attorney, as such, who must be notified for his acceptation, oath and bond. (Signed) de Reggio.

Certification.

In the city of New Orleans on the said day, month and year (August 25, 1784), the Escribano notified Fernando Rodriguez, in person, who certified that no will has been executed, nor disposition drawn up before him, nor deposited in his Archives, for Francisco Muñoz. (Signed) Fernando Rodriguez.

Notification, acceptation and bond.

In the city of New Orleans, on the said day, month and year, the Escribano notified Pedro Bertonière of his appointment to defend the absent heirs, and in accordance with same he said he accepted and did accept and swore by God and the Cross to proceed well and faithfully with the duties of his charge to the best of his knowledge. He promised to take counsel of persons versed in such matters and qualified to give it. And Antonio Mendez being present said he constituted himself bondsman for Pedro Bertonière and hereby obligates himself that, should the latter fail to comply with the duties of his office, either because he cannot or does not wish to do so, then he, as his bondsman, will assume the damages, arrears, prejudices and losses that may have been caused through lack of proper defense and makes himself responsible for all legal proceedings and transactions connected with the settlement of the succession, and in fulfillment whereof he obligates his present and future estates, inserting here the guaranty clause renouncing the laws in his favor with the general which prohibits it. Thus he has executed and signed; the

witnesses here present were Andres de Molina, Francisco Carcasses and Manuel Monrroy. (Signed) Antonio Mendez and Pedro Bertonière, before Rafael Perdomo, Clerk of the Court.

Will.

In the name of God Almighty, Amen: Be it known that I, Francisco Muñoz, a native of Granada, in the Kingdom of Upper Andalusia, the legitimate son of Juan Muñoz and Maria de Guet, both dead and also natives of the same place, am seriously ill, but in the full possession of all my faculties which God, Our Lord, has been pleased to give me and believing firmly, as I do believe, in the most sacred mysteries of the Holy Trinity, God the Father, God the Son, and God the Holy Ghost, three persons, really and truly distinct, and in one, sole, true God, in the Incarnation of the Word Divine, that was made Man, for our salvation, in the womb of Our Lady, the Virgin Mary, and in all the other mysteries and articles that are believed in, confessed and acknowledged by Our Holy Mother, the Catholic, Apostolic and Roman Church, under which Faith I have lived, and I declare I shall live and die as a Catholic and faithful Christian. I fear death, which is natural to all creatures because its hour is uncertain, and foreseeing that mine has arrived, I make my will, and for its better execution I elect for my Advocate the Sovereign Queen of the Angels, Mary, Our Most Holy Lady, and humbly supplicate her to intercede with her Precious Son to pardon the gravity of my sins and to place my soul in the way of salvation. With this protestation and Divine Invocation, I draw up my will in the following manner:

1st. I commend my soul to God, Our Lord, Who has created and redeemed me with the price and infinite value of His Precious Blood, Passion and Death. My body I consign to the earth from which it was made, and in death I wish to be shrouded in a white sheet and that I be given burial in the Parish Church of this city in the place chosen by my testamentary executor, to whose disposition I leave all arrangements for my funeral so that he may do whatever may seem fit to him.

2nd. I will that three Masses be said for my soul, with an additional of fifty prayers said in my favor, and that a Cantata be sung while my body is present, if possible, and if not let it be sung the day after my funeral. Let an alms of 2 reales for each one of the forced bequests be given, which must be taken from my estate.

3rd. I will that when my death will have taken place and the day and hour for my burial set, twenty-five poor people will be asked to accompany my body to the grave. My testamentary executor must give each one 1 peso and 1 wax candle, as an alms, which will be taken from my estate.

4th. I will that after my death the statue of Our Lady of Sorrows, to whom I have special devotion, shall remain on the

altar in the hall of my testamentary executor's house, where it now stands, or else be placed in the Parish Church of this city. If it should be moved, let it be transferred with the greatest respect and all due reverence and kept there until such time as it will be removed to the Church, or Chapel, of the Charity Hospital of New Orleans, then, after permission has been obtained and all necessary formalities have been complied with, the said most potent image must be erected in the place that may be considered most convenient. And in order that my bequest may be carried out concerning this statue, I pray the person who will have charge of the matter to burn a lamp, day and night, in perpetuity, before the shrine, as a respectful tribute of devotion. For this purpose my executor and guardian of my estate will deliver the sum of 300 pesos to the Vicar Ecclesiastical Judge of this Province, so that having this amount as a fund belonging to the Hospital, the assistant curates, or chaplains, appointed to serve in the said Hospital, may be charged with the care and preservation of the aforesaid statue and lamp mentioned above. For such is my will.

5th. I declare that I was married and veiled according to the rites of Our Holy Mother, the Church, in my first marriage with Maria de Tolmos, a native of Granada. One child was born of this union, named Josefa Muñoz, at present aged thirty years, unmarried and absent in the city of Granada. Thomasa del Castillo became my second wife, but there was no issue from this marriage. Antonia Pastrana was my third wife, but no children was born to us either; and all three are now dead. When I contracted marriage with Maria de Tolmos, she brought no capital to the community, other than clothes for her own use and a few furnishings for her room, and for my part, I owned an olive orchard, two houses and 110 pigs, together with all the rest of the furniture for the house, amounting to a little more than 6000 ducats, and when I contracted my second marriage my capital was the same as I have already declared and Juana (Tomasa) del Castillo's dowry amounted to 5500 ducats, and at the time of my third marriage in Havana, I brought, as capital, 200 pesos and a horse, inclusive of what I have already stated as now existing in Granada. Antonia Pastrana, my third wife, did not bring anything to the community, except her clothes and some few pieces of furniture, of very little value. In testimony whereof I declare.

6th. My estate consists of 1 Negro, named Francisco, a Creole of this Province, to all appearances aged fourteen years.

7th. I further declare, as belonging to my estate, a Negress, named Maria, a washer and ironer, seeming to be 28 years old. It is my wish that whenever she can exhibit the sum of 350 pesos her freedom will be given to her immediately by my executor, with the full understanding that she need not be appraised, nor obligated to do more than to deliver, to whom it may concern,

4 reales daily, for a days work, during the time allotted to make her payments for the amount of her valuation. When this sum will have been paid, an act of emancipation must be drawn up for her, and I request my executor to receive the said reales in whatever large or small amounts offered, according to her ability to pay on account, for the price agreed upon as a just estimate of the true value of this slave.

8th. I declare the sum of 200 pesos, in notes and drafts on the treasury of this army, as a further part of my estate. These will be found in one of my chests, together with 80 hard silver pesos in new Mexican coin.

9th. I declare my estate to further consist of furniture and clothes for my own use, a few silver trinkets and a silver watch. All will be found in my armoire. My executor must render an account of them.

10th. I also declare, as a part of my estate, 1 quintal of tallow, together with all the tubs, buckets and other utensils that are in the Royal Prison, because I bought them with my own money. I request my executors to reclaim them, or at least their intrinsic value, immediately after my death, from the Judge who will have cognizance of my succession, after an appraisement will have been made by persons versed in such matters.

11th. I declare, as a part of my estate, a debt of 10 pesos, owed to me by Mr. Bilmar, Second Adjutant of this Place, which is the same amount I lent him on a note still running.

12th. I further declare, as a part of my estate, 3 pesos 4 reales due me from Pedro Duberges; this is the last remainder of a larger sum credited on a note which will be found among my papers and receipts which I have rendered in his favor for the payments he has already made.

13th. I also declare cypress cabinet, or armoire, which contains several pieces of crystal, some cups, plates, dishes, a chocolate pitcher, coffee pots and other small articles for the service of the house.

14th. I further declare, as a part of my property, all the pots and pans in which the meals for the prisoners are prepared.

15th. I declare the Sergeants named Falcini (evidently a line is omitted in copying this will) of the Militia and Commanders of the Regiment of Infantry of this Place, owe me, respectively, the former 10 pesos and the latter 20 pesos. It is my will that nothing be demanded of them in considerion of the present state of their affairs, since they have no funds to meet their obligations. However, if in the future they should have any money, then I wish my executor to collect these debts and enter the amounts in the body of my estate.

16th. I declare that I do not owe anybody anything; however, if I have forgotten to discharge my conscience and any legitimate debts may be proven against me, then it is my wish that my estate pay them. I further will that all active debts, already mentioned, be collected and those against me be paid.

17th. When I die, it is my wish that my executor and guardian of my estate give Barbara Solis 25 pesos from the funds I have declared, in remuneration for her good services and the special kindness with which she has assisted me during my infirmity. For this is my will.

18th. Just as soon as my death will be verified, it is my wish that my testamentary executor and guardian of my estate deliver to the Negress Maria, my slave, the cypress chest in my room, which contains all the clothes for my own use, and 130 pesos, more or less, that she has earned in my house, in various ways, with my consent. It must be well understood that if, at the time the said chest and money will be delivered to her, a sum in excess of the amount specified above be found, my executor must extract the surplus, because it is certain she could not have earned it by the means at her disposal.

19th. I declare that over and above the debts I have already stated as due me by different persons, there are several entries for the maintenance of the prisoners at present in the Royal Prison, or will be there at the time of my death, as may be noted from the books used for recording the entrances and discharges of these said prisoners, which I carry annually in accordance with the duties of my office. It is my wish that my executor take every means possible to demand and collect these amounts so that they may become a part of my estate.

20th. And in order to carry into effect this my last will, I name as my testamentary executor and guardian of my estate, Antonio Tamis, as first appointee, and Maria Ignacia Rodriguez, his wife, as second, so that they may execute this disposition within the year of executorship, and when that period has elapsed, if they have not settled my succession, then the time may be extended for as long as will be necessary.

21st. That for the remainder of all my property, debts, rights and actions, that by any other title may concern, or belong to me, I institute and name as my sole and universal heir, the above-said Josefa Muñoz, my daughter, and in case of her death, her children, my grandchildren, should there by any, and in order to ascertain what is set forth in this clause and to know for a certainty whether or not any of my legitimate heirs exist in the Kingdom of Spain, I pray and charge the Judge who has cognizance of my succession to send official letters to the Judges and Justices of Granada, so that with the necessary degree of certainty, as such cases require, they will inform themselves of

the truth in this matter and certify to their findings. And if no legitimate heirs to my estate exist, then using the faculties the law grants me, in this particular, I institute and name as my sole and universal heirs, Maria Ignacia Rodriguez, daughter of Antonia Pastrana, my deceased wife; Josefa, at present married to Ventura Urieta, Sub-Lieutenant of the Regiment of Infantry of this Place; Josef, the elder, aged 15 years; Joaquin, 14; Josef de Loia, the younger, aged 12; all four the children of my above-named daughter-in-law (stepdaughter), so that they may inherit, with God's benediction and mine, my estate in equal parts. My testamentary executors, in the interim, must maintain in their possession the part which will belong to each one of the minors until he will become of age to take possession of his share. I revoke and annul the will I drew up before the present Escribano, on July 20th of last year, and request that this be annotated in the margin so that this revocation may be made evident for all time, and also any other will or codicil that I may have made, either in writing, or verbally. It is my wish that they be of no value, nor have credit in justice, nor outside of it, save this one alone, which must be guarded, fulfilled and executed, in whatever way and form that may be legal, as my last and final will.

In testimony whereof this act is dated in the city of New Orleans, August 21, 1784.

I, the Escribano, attest that I know the testator and that he appears to be in the full possession of all of his faculties and so he has authorized and signed; the witnesses, here present, were Josef Solis, Francisco Carcasses and Manuel Monrroy, residents of this city. (Signed) Francisco Muñoz. Before Rafael Perdomo, Notary Public.

The above conforms to the original which was executed before me and remains in the Archives in my keeping, to which I refer, and in fulfillment of a decree, I set the present down on twenty-nine sheets of common paper, stamped paper not being in use here. New Orleans, August 25, 1784. Cross and Flourish. In testimony of the truth. (Signed) Rafael Perdomo, Notary Public and Clerk of the Court. Rights to taxation as though an original document.

[**Translator's Note:**—The record ends here because the proceeding is suspended until the Court in New Orleans receives an answer from Granada, Spain, regarding Josefa Muñoz, if living, and in case of her death, whether or not she has left direct heirs.—L. L. P.]

August 26.

Proceedings brought by Alexo Reau(d) and Miguel Fortier to prove the loss of some Negroes shipped to them on their Brigantine, the Thetis.

No. 35. 11 pp.

Court of Intendant Martin Navarro.

Assessor, Juan del Postigo.

Escribano, Rafael Perdomo.

This suit, which is related to another case indexed in this installment under date of August 16, 1784, illustrates the legal procedure involved in relieving a consignee in New Orleans of all blame and responsibility for the death of some Negro slaves while in transit to that port, the deaths having resulted from causes beyond the control of the consignee. The case came before the Court of the Intendant, which had jurisdiction over all commercial and maritime cases instituted in Spanish Louisiana.

Miguel Fortier and Alexo Reaud, in a joint petition, set forth that the Brigantine, Thetis, Andres Duget, Captain, clearing from Guarico, has just arrived in this port, with a cargo of Negroes consigned to them, five of whom have died on the way, as may be proven from the Captain's declaration before Escribano, dated August 16, 1784. (See entry Marine Protest, Andres Duget, Captain of the Thetis, petitions to prove his losses, etc. No. 36.) These slaves died at the Balize of this river, through illness and other causes, because of the grounding of the ship, as will be found more extensively stated in the Marine Protest made before the present Escribano. Therefore, in order that the losses caused by the death of these Negroes may be charged against the underwriters of the said cargo, may it please His Lordship to request the Captain and the crew to swear and declare in due form of law, each one in a separate deposition, as to the number of slaves who have died during the time it took to come from the Balize to this city, and done deliver their declarations to the petitioners so that upon seeing them they may take whatever action that may seem suitable and in accordance with justice. Martin Navarro, on Juan del Postigo's advice, decrees: Let these parties swear to the contents of the above petition, as requested, the taking of their depositions will be entrusted to the Escribano, and done deliver them to Messrs. Fortier and Reaud.

Witnesses called to testify.

The first witness called on September 17, 1784, is Mr. Faure, who proves to be the First Surgeon on the Thetis. Under oath, administered by the Escribano, he declared he was engaged to serve on the ship at her place of sailing, where he was informed that they would carry a cargo of Negroes. Over and above the five who died at the Balize, several others passed away and their bodies were thrown overboard, during the time it took them to ascend the river. The deaths took place on the following days named: On August 12th 1 Negro; on the 17th 1 Negro; on the 24th 1 Negress; on the 27th, 2 Negroes and 1 Negress; and later,

on September 2nd, 1 Negro; and on the 7th of the same month 1 Negro; amounting in all to 8, five males and three females. He answered that what he has declared is the truth, under charge of his oath, he is 24 years of age, and he signed, to which the Escribano attests.

Other witnesses testify.

The other witnesses, Josef Ristol, signing himself Jacques Ristor, a sailor on the Thetis, Leon Boulmay, 2nd Officer, and Pedro Brujie (Brussier), Quartermaster, each in a separate declaration, corroborate the testimony given by Dr. Faure.

The Plaintiff's petition to be cleared of responsibility.

Alexo Reaud and Miguel Fortier then petition, stating that the depositions of the witnesses have been delivered to them, as previously requested, and from their testimony what the plaintiffs have set forth in their first representation has been fully proven, therefore may it please the Court to declare same as legal and sufficient to clear them of all responsibility in the matter, so that action may be taken against the person, or persons, answerable for the losses, and for greater validation and force to interpose its authority and judicial decree. They further ask for a taxation of the costs of this case and to have the Escribano supply them with a certified copy of the entire proceeding, which they ask to have authorized in public form in a way that will have credit, and they will promptly pay all just and due fees. Martin Navarro, on Juan del Postigo's advice, receives this petition and on September 23, 1784, decrees:

Decree.

Whereas: Let the testimony given in favor of Alexo Reaud and Miguel Fortier be declared as sufficient to acquit them of any responsibility concerning the death of the slaves belonging to the cargo of the Thetis, that has come into port consigned to them. Therefore he absolves them of any blame in the matter and orders the losses and prejudices charged against the one who is liable for same, His Lordship interposing his authority and judicial decree for greater validation and force inasmuch as he can and must. Let a taxation of costs be made and a certified copy of these proceedings be given to the parties as they have requested. Assessor's fees 24 reales. (Signed) Martin Navarro; Licenciado Postigo.

Notification for taxation of costs.

On the said day, month and year (September 23, 1784), pursuant to the foregoing decree, the Escribano personally notified Luis Lioteau, Public Taxer, of the contents of the foregoing decree, and in consequence whereof he said he accepted and did accept and swore by God, Our Lord and a Sign of the Cross, according to law, to proceed well and faithfully with the taxation he has been ordered to make, and he signed, to which the Escribano attests.

Note: In fulfillment of the foregoing decree, Rafael Perdomo drew up a certified copy of these proceedings on 18 sheets of paper and delivered it to the party. New Orleans, April 16, 1785. To which he attests. (Signed) Perdomo.

A second note, dated this day (March 18), reads: I drew up a certified copy of these proceedings, in duplicate, and delivered them to the party in accordance with the decree rendered. (Signed) Perdomo.

Costs are taxed on April 18, 1785, by Luis Lioteaud at 16 pesos 5 reales.

August 27.

Ignacio Valderas vs. Guillermo Dubuisson.

No. 3305. 12 pp.

Court of Governor Esteban Miro.

Assessor, Juan del Postigo.

Escribano, Fernando Rodriguez.

To collect a debt.

This incomplete proceeding illustrates certain points of legal procedure involved in collecting a debt by executory process.

The case opens with two letters written in French. The first is dated Mobile, March 10, 1784, and is from Guillermo Dubuisson to Mr. Baldaras, Commander at Bayou St. John. The second, dated New Orleans, January 12, 1784, addressed to "Sir and Brother", is signed Dubuisson Sons. Using these as exhibits, Ignacio Valderas, Sublieutenant of the Fixed Regiment of Infantry of Louisiana, in a petition sets forth that at the close of last year he gave Guillermo Dubuisson 250 hard pesos to invest in certain specified effects and produce, but, contrary to the plaintiff's intentions and their agreement, the defendant purchased merchandise that it was impossible for him to receive, because nothing was suitable. When he expressed his dissatisfaction, his opponent answered that he would take the effects on his own account and return the capital, as his letters, duly presented, stipulate, and he promised to render a statement of the goods he had placed in the petitioner's keeping, which the latter consented to accept and will give a receipt for same. Therefore, may it please His Lordship to order Mr. Dubuisson to return the said 250 hard pesos, either in money or effects, and he will promptly give him the receipt mentioned above. Governor Miro, on Juan del Postigo's advice, rules: The letters having been presented, let Guillermo Dubuisson swear and declare whether the signatures at the end of each one are his. Entrust the taking of this declaration to the Escribano, and done send the deposition to the plaintiff.

Mr. Dubuisson's declaration. In the city of New Orleans, on February 2, 1785, Guillermo Dubuisson appeared before the Escribano, who, in virtue of the commission conferred upon him, received the defendant's oath taken by God, Our Lord and a Sign of the Cross, according to law, under charge of which he promised to tell the truth, and when the two letters filed on pages 1 and 2 were placed before him, he said their contents is true and the signatures his, and he also said that he will promptly pay Ignacio Valderas, just as soon as they can adjust their accounts. What he has stated is the truth under charge of his oath, he is 37 years old, and he signed, to which the Escribano attests.

Copy of Mr. Valderas' Procuration. The next entry is a certified copy of a General Power of Attorney by which Ignacio Valderas appoints Pedro Bertonière to represent him in all law suits, whether civil or criminal, and any other legal transactions, as the case may be. This Notarial Act is dated January 15, 1785.

The plaintiff prays for a Writ of Execution. The plaintiff then presents a second petition, wherein he states that according to Mr. Dubuisson's declaration the latter owes him 250 hard pesos, and considering that this acknowledgment gives him the right to seize some of his property, he prays for a writ of execution against any and all of his estate to the extent of the debt, its one-tenth and costs. Mr. Valderas gives his assurance that he will render an account and make full payment for the goods he has received, belonging to his opponent. He further swears by God, Our Lord and a Sign of the Cross, that the 250 pesos is due him and has not been paid. The Governor General, on the Assessor's advice, receives this petition and later decrees:

Decree. In the city of New Orleans, on February 16, 1785, Señor Don Esteban Miro, Colonel of the Fixed Regiment of this Place and Governor, ad interim, of the Province, having seen these records, decrees: That he must order and does order a Writ of Execution issued against Guillermo Dubuisson for the sum of 250 pesos, its one-tenth and costs, caused, or to be caused, up to the real and effective payment, for this is his decision and thus he signed. Fees 2 pesos. (Signed) Esteban Miro; Licenciado Postigo.

The Writ. Let the Sheriff of this city, or in his place the Deputy Sheriff, request Guillermo Dubuisson to pay Ignacio Valderas the sum of 250 pesos, at once, and if he does not do so, take the execution against his person and property for a sufficient amount to

satisfy the sum mentioned, its one-tenth and costs, pursuant to a decree rendered on the Assessor General's advice, dated February 16, 1785. Thus it has been ordered. New Orleans, April 22, 1785. (Signed) Esteban Miro. By order of His Lordship. (Signed) Fernando Rodriguez.

Return of the Writ.

In the city of New Orleans, on May 24, 1785, the Deputy Sheriff appeared before the Escribano and declared that, with the writ on the reverse side of this page, he requested Guillermo Dubuisson to pay the sum mentioned therein, and because he has not done so, nor assigned any property for seizure, the said writ was not carried into effect, therefore he wishes to return it to the Court and to have the above set down as a matter of record, which he signed, and the entire proceeding was attested to by the Escribano. (Signed) N. Fromentin, before Fernando Rodriguez, Clerk of the Court.

The Plaintiff asks for the arrest of the defendant.

Ignacio Balderas (Valderas) petitions to say that although Guillermo Dubuisson has been requested to pay his debt and a Writ of Execution has been issued against him, he has not paid, nor assigned any property to satisfy it, as may be proven from the Deputy Sheriff's report, therefore to obviate the malice the defendant has shown, may it please the Court to order the Deputy Sheriff to apprehend him and place him in the Royal Prison of this city and hold him there until he has settled his indebtedness. Governor Miro, on Juan del Postigo's advice, rules: As it is prayed. Let the arrest be made by the Deputy Sheriff.

Arrest of the Defendant.

In the city of New Orleans, on December 14, 1785, Nicolas Fromentin, Deputy Sheriff, appeared before the Escribano and said that, in virtue of the foregoing decree, he requested Guillermo Dubuisson to pay Ignacio Valderas the sum of 250 pesos, but because he did not do so, nor show any property to be used to satisfy his indebtedness, he placed him in the Royal Prison of this city, and in testimony whereof he sets this down as a matter of record, which he signed and to which the Escribano attests. (Signed) N. Fromentin, before Fernando Rodriguez.

[**Translator's Note:**—The record ends here and is therefore incomplete. The case may have been settled out of Court.—L. L. P.]

August 27.

Proceedings brought by Felix Dematerre against Pedro Pedesclaux to demand an accounting.

Written on the fly leaf: "You must include in the taxation the writ of execution the party holds,"

No. 111. 28 pp.

Court of Governor Esteban Miro.

Assessor, Juan del Postigo.

Escribano, Rafael Perdomo.

This unfinished suit illustrates the legal procedure involved when a resident of France seeks to compel his brother who resides in Spanish Louisiana to make an accounting of funds belonging to the estate of their deceased parents, who have died in France. There are several complications presented in the proceedings here indexed; but since the suit as here presented is incomplete, the outcome of the entire litigation cannot be given herein.

The first document filed with this suit is a Procuration written on officially stamped paper, which reads, in part: That today, March 15, 1784, before the undersigned Counsellors of the King and Notaries of Bordeaux, there was present Mr. Hughes Pedesclaux, merchant of Bordeaux, who lives on Boufart Street, Parish of St. Cristophe, who has made and constituted as his General and Special Procurator, Mr. Felix Dematterre, merchant in Louisiana, to whom he gives the power to act for him and in his name to cause Pierre Joseph Pedesclaux, the constituent's brother, to render an account of all transactions and sums of money due him, or that may be due at some future time; for any law suits that may be necessary; to examine and wind up the said accounts, or to protest them; and to receive all funds, effects and merchandise; to demand and obtain an execution; to give all receipts and acquittances, and in case of refusal or delay, to take all proceedings of seizure and arrests for debt that may be necessary up to the full satisfaction of all claims. For this purpose he revokes all other procurations and particularly the one he has granted to the said Pierre Joseph Pedesclaux to cause the said Mr. de Matterre to render an account to him. It is his wish that this present power of attorney be fully executed. And promising and obligating himself generally, etc. Done in Bordeaux in the office of Duprat, one of the above-said Notaries, and signed in the original by the said Duprat and his partner, which remains in their keeping. Registered in Bordeaux by Arbaurre. (Signed) Troupenat and Duprat.

We, Joseph Sebastien de la Rose, Counsellor of State and of Parliament for Bordeaux, Presiding President, Lieutenant General in the Seneschal of Guienne, Royal Provost of L'Ombriere, and Guardian of the Royal Privileges of the University of Bordeaux, certify to all to whom it may concern, that Messrs. Troupenat and Duprat, who have signed the foregoing Power of Attorney, are Counsellors of the King and Notaries of this city,

to the signatures of whom credit must be given in judgment and outside of Court. In testimony of which we have signed in our Office in Bordeaux, May 16, 1784. (Signed) Delarose.

On the last page of this Procuration Hugo Pedesclaux writes in Spanish: I, the undersigned vice-consul of His Catholic Majesty, in this Port, certify that Joseph Sebastian de Larose whose signature appears above, I say on the reverse side of this paper, is titular Counsellor of State and of Parliament for Bordeaux, Lieutenant General of the Seneschal of Guienne, in which capacity he must be given full faith and credit in justice and outside of it. Bordeaux, on March 16, 1784. (Signed) Hugo Pedesclaux.

[Wax Seal]

The plaintiff petitions to have the defendant make a declaration.

Hugo Pedesclaux, through his attorney, Felix Dematerre, sets forth that in order to prepare his legal action it is convenient to him to have the Court require Pedro Joseph Pedesclaux, resident of this city, declare in due form of law the amount of money he has in his keeping, belonging to the plaintiff, of which he must render an accounting, and, if these funds are not still in his possession, who now has charge of them, and done deliver his deposition to the petitioner to be used to enforce his client's rights. Esteban Miro, on Juan del Postigo's advice, rules: The power of attorney having been presented, let it be translated by Juan Joseph Duforest, and done the party must then swear and declare as requested, the taking of the deposition to be entrusted to the Escribano, and done deliver it to the plaintiff.

Notification, acceptation and oath.

On the said day, month and year (August 27, 1784), the Escribano notified Juan Josef Duforest, Public Interpreter, in person, and he said he accepted and did accept and swore by God and the Cross, according to law, to proceed well and faithfully with the duties of his office, and he signed, to which the Escribano attests. This is followed by the Spanish translation of the French Power of Attorney filed at the beginning of this suit.

Pedro Pedesclaux makes his declaration.

In the city of New Orleans, September 1, 1784, the Escribano, in virtue of the commission conferred upon him, went to Pedro Josef Pedesclaux's home to receive the declaration he has been ordered to make, and upon arriving there accepted his oath taken by God and the Cross, according to law, under the charge of which he offered to speak the truth, and when examined upon the tenor of the foregoing written petition he said: He could not state positively the full amount of the funds in his keeping, because to do so would necessitate the drawing up of accounts for the proceeds from the sale, besides various amounts that have been spent. A part of this money is now in his possession, while other

sums are deposited with several persons in this city and with Manuel de Quintanilla, a resident of Havana. As regards the goods delivered to the latter, this was done before his departure for Cuba, to enable him to sell them to advantage there. Up to the present he has not given an accounting of these sales. The defendant states that what he has declared is the truth, under charge of his oath, and that he is 29 years of age. (Signed) Pedro Jf. Pedesclaux, before Rafael Perdomo.

Hugo Pedesclaux petitions to have the defendant render an account of the funds in his keeping.

The plaintiff's attorney then avers that although Pedro Pedesclaux has declared he holds certain sums belonging to his client, he has not stated the full amount of them, nor does he give the names of the other persons he mentions as having funds in their possession that should go to Hugo Pedesclaux, giving as an excuse that he cannot specify, positively, the full amount, because he has not drawn up the accounts resulting from the sale. Therefore, to enable the petitioner to set forth his client's rights, may it please the Court to order the defendant, within a predetermined time, to produce an account of his administration of the funds in his keeping, belonging to his brother. Governor Miro, on Assessor Postigo's advice, rules: Let the account be produced within 12 days, by Pedro Josef Pedesclaux, as requested.

The plaintiff presents a second petition, complaining that the defendant has not complied with the Court's last decree.

Hugo Pedesclaux, through his attorney, again petitions, this time to say that pursuant to his last representation it has pleased the Court to order Pedro Pedesclaux to produce an accounting within 12 days. He has not obeyed this decree, although the present Escribano has notified him of it. Therefore he accuses him of being in default and prays the Court to render a decision in accordance with justice. Esteban Miro, on Juan del Postigo's advice, rules: Let Pedro Pedesclaux present the accounting he has been ordered to render, within 3 days.

Pedro Pedesclaux answers, asking a revocation of the foregoing decree.

Pedro Pedesclaux alleges that he has been notified of a decree requiring him to give an account of the estates left by his late parents, and whereas the said decree is very prejudicial to him he prays the Court to revoke or amend it and to order the records of the case delivered to him to enable him to add force to his plea. Governor Miro, on Assessor Postigo's advice, rules: This petition having been admitted, let the records of the case be delivered to him in the customary way.

The plaintiff still complains that the defendant does not produce the accounting.

Felix Dematerre states that more than 12 days before, his opponent received the records of the case to enable him to draw up his accounting, as he was ordered to do, but up to the present he has not rendered this account, nor

filed an answer, and because this delay is prejudicial to his client, he accuses him of being in default and prays the Court for a legal decision. Esteban Miro, on Juan del Postigo's advice, decrees: Let this party answer Pedro [Hugo?] Pedesclaux's written petition which has been delivered to him.

Pedro Pedesclaux answers, complaining that his opponent has not filed the necessary documents to prove his claim.

Pedro Pedesclaux answers to the effect that the records of the case were delivered to him to enable him to add force to his petition against the decree on the reverse side of page 7, and in consequence of same to exclude his opponent's unjust claim; to condemn him to perpetual silence; to the payment of all costs of the case, since he is the agressor, and as a result of the said decree to consider what belongs to him by right and is in general favorable to his cause. In this regard he sets down the following:

It is incontestable that the documents his opponent presents have not sufficient merit to serve as evidence in Court, and up to now he has not filed anything except a special power of attorney, and this, with no other record, is not enough to form a basis for a claim. It must be fully known to His Lordship that it is impossible for the plaintiff to prove his legal rights in this way. A certified copy of a will, a contract, or act of partnership should accompany the procuration as proof of his right to request an accounting. However, Hugo Pedesclaux has not presented any of these instruments, thus showing his pretentions to be of no value.

The defendant's argument will seem clearer to the Court if His Lordship will consider that both he and his brother are heirs to the estate left by their father, and that the plaintiff, without filing the proper documents, has not the right to demand an accounting, although one will be promptly given when a request has been legally made by the proper person, but in no other way, because if the contrary were permitted anyone could, with impunity, demand of another, in Court, whatever his arbitrary will might dictate.

Notwithstanding what he has stated in his declaration on page 6, he has never attempted to state positively the amount he owes either his brother or their late father, so the plaintiff cannot claim a larger share than he, since they are co-heirs to the estate that has been left to them. Therefore, asking consideration for all that results in his favor, he prays the Court to disregard this claim and to order as he requested in his first petition. Governor Miro, on Assessor Postigo's advice, rules: Let this petition be sent to the plaintiff.

Hugo Pedesclaux answers, requesting a fulfillment of the decree on page 7.

Hugo Pedesclaux answers, praying that in strict merits of justice it may please the Court to disregard his opponent's captious petition and order the decree on page 7, pronounced in his favor, fulfilled and executed, because

it is in accordance with the defendant's declaration given on page 6, at his request, and that his power of attorney is more than sufficient for all purposes, although Pedro Pedesclaux in his written petition objects to it, his frivolous arguments, however, seem to be given with intent to prolong the suit, which must be apparent to the Court. Therefore he prays His Lordship to declare them as nul, since there is no doubt but that the funds he holds in his possession belong to Hugo Pedesclaux and that he must render an account of them in one way or another, and just because he has an interest in the matter does not give him the right to appropriate all money for himself, and giving an account of his administration does not deprive him of his share which belongs to him and which he will receive from his father's estate. This share, however, cannot be claimed here, since his parents died in France, where he must take action either in person or through an attorney. Therefore, considering the merits of the case, may it please the Court to judge in conformity to what he has set forth in his first petition. Esteban Miro, on Juan del Postigo's advice, receives this petition and on October 21, 1784, decrees: Let the decree of September 25 be carried into effect.

Certified copy of a Power of Attorney.

The next entry is a certified copy of a Notarial Act, dated October 26, 1784, by which Pedro Pedesclaux appoints Antonio Mendes, Public Attorney, to represent his interests in the prosecution of this suit brought against him, in his brother's name, by Felix Dematerre, asking the settlement of their late father's estate.

Pedro Pedesclaux petitions to present the foregoing Procuration.

Pedro Pedesclaux sets forth that in accordance with the certified copy of his Procuration, duly presented, may it please the Court to accept the attorney he names therein and permit him to represent the defendant in all future proceedings until this cause is concluded.

The plaintiff petitions to seize funds belonging to the Pedesclaux estate.

On November 25, 1784, Felix Dematerre petitions, in the name of Hugo Pedesclaux, averring that it has come to his notice that Pedro Camus, a merchant and resident of this city, owes Pedro Pedesclaux a certain sum of money resulting from the sale of effects belonging to his client. Therefore, to avoid prejudice, may it please the Court to order Mr. Camus to swear and declare in due and proper form and without delay the full amount of the debt he owes Pedro Pedesclaux, and done, if his declaration conforms to what the petitioner has stated, to decree that his indebtedness to the defendant be placed under an embargo, in his keeping, at the disposition of the Court until such time as the said accounts will be rendered as has been ordered. Esteban Miro, on Juan del Postigo's advice, rules: As

it is prayed, and when the declaration will have been made let it be delivered to this party. The taking of the said deposition will be entrusted to the Escribano.

Pedro Camus' declaration.

In the city of New Orleans, on November 29, 1784, pursuant to the foregoing decree, the Escribano went to Pedro Camus' house to take the declaration he has been ordered to make. Oath was administered to him, under charge of which he promised to tell the truth, and when examined upon the principal statement in the foregoing petition, he said that as far as he can remember, but does not affirm positively, he owes Pedro Pedesclaux 2500 pesos, and that just as soon as he receives the accounts he will draw up a trial balance for the amounts he lawfully owes, which he obligates himself to keep in his possession, by means of embargo, at the disposition of this Court, in accordance with the foregoing decree. He answered that what he has declared is the truth, under the oath he has taken, and that he is 41 years of age. He signed, to which the Escribano attests. (Signed) Camus, before Rafael Perdomo, Clerk of the Court.

[Translator's Note:—The record ends here and is therefore unfinished.—L. L. P.]

August 30.

Renunciation of the Office of Public Attorney made by Francisco Broutin to Antonio Mendez.

No. 106. 11 pp.

Court of Governor Esteban Miro.

Assessor, Juan del Postigo.

Escribano, Rafael Perdomo.

This case affords an excellent illustration of the legal procedure involved when the holder of an important public office in Spanish Louisiana wishes to renounce the office in favor of a particular individual. After the value of the office has been established by appointed appraisers, and the fees and taxes on such transfer have been paid, the designated successor in the office is examined as to his qualifications for the position and found proficient. The new incumbent is then installed temporarily in the office, subject to future confirmation by the proper authorities in Spain.

The first entry is a certified copy of the Renunciation which reads: In the city of New Orleans, on August 9, 1784, before the undersigned Notary and witnesses, appeared: Francisco Broutin, Procurador del Numero (One of a special number of attorneys commissioned to practice before the Court), known to the former, and he said that in virtue of the Royal Ordinance treating of vendible and renunciable offices, and exercising the faculties conceded by them, he renounces the Procuratorship, now held by him, into His Majesty's hands, and that if it be his pleasure, the said office may be transferred to Antonio Mendez, a person having the qualifications necessary to fill the position. And if the King does not deign to grant this favor, then he does not renounce it, and should he retain his employment he reserves to himself the right to fulfill the obligations appertaining to same as he has done up to the present. Thus he has

executed and signed, the witnesses here present were Josef Becat, Manuel Galvez and Phelipe Guinault, residents of this city. (Signed in the Original) Francisco Broutin, before Fernando Rodriguez.

The above conforms to its original which was executed before Fernando Rodriguez and remains in his keeping and Archives, to which he refers, and upon the request of the party he gives the present in the city of New Orleans, on the day of its execution. In testimony of the truth. Cross and Flourish. (Signed) Fernando Rodriguez, Clerk of the Cabildo and Government.

Antonio Mendez petitions for a decree confirming his appointment.

Antonio Mendez petitions to say that, as appears from the certified copy of the renunciation of the Office of Public Attorney of this city which duly accompanied this, Francisco Broutin has ceded the Procuratorship to him, therefore, in order to be able to take possession of this position, may it please His Lordship to institute the necessary proceedings to receive him and to confirm him in the use and exercise of the said office, in the same terms and under the customary formalities according to which renunciations are made and successors appointed subject to Royal Approval. Esteban Miro, on Juan del Postigo's advice, rules: Send the above to the Accountant of the Army, so that in virtue of the position he holds as Fiscal of the Royal Treasury he may place the party, presenting the certified copy of the renunciation, in the office specified.

Juan Ventura Morales offers no objections to the appointment of Mr. Mendez.

Juan Ventura Morales, Royal Official Accountant and Treasurer for the Branch of Trade and Friendship between the Inhabitants and the Indians and Acting Accountant for the Army, with the functions of Fiscal, upon seeing what has been sent to him regarding the proceedings instituted by Antonio Mendez to be confirmed in the use and exercise of the Office of Attorney, renounced in his favor by Francisco Broutin, who has held the position, as such, says he offers no objections if it pleases His Lordship to accede to Mr. Mendez' request, after a certification has been obtained from the present Escribano stipulating that full 20 days have elapsed since the renunciation was made, as the law requires, and also that an appraisement be made of the Office of Attorney, by experts which His Lordship must be kind enough to name for this purpose, and that before he is inducted into the said Office a full payment must be made to the Royal Treasury of the taxes that belong to His Majesty in conformity to law. New Orleans, August 13, 1784.

(Signed) Juan Ventura Morales.

Governor Miro decrees.

The present Escribano must certify, as requested, and let Fernando Rodriguez, Escribano for the Government, and Esteban Quiñones be named appraisers to place a value upon the Office renounced by Francisco Broutin. They must be duly notified for their acceptations and oaths. The acting Accountant of the Army must also be notified, and done bring the records to the Court so that judgment may be rendered and other legal formalities complied with.

Notification, acceptation and oath.

On the said day, month and year (August 31, 1784), Fernando Rodriguez and Esteban Quiñones, Notaries Public, were personally notified and they said they accepted and did accept and swore by God and the Cross, according to law, to proceed well and faithfully with the appraisement they have been ordered to make. (Signed) Fernando Rodriguez and Estevan Quiñones, before Rafael Perdomo.

Certification.

In the city of New Orleans, on the said day, month and year, the Escribano went to the house of Francisco Broutin, Attorney of this city, who is known to him, and upon arriving there he conferred with him and questioned him about various matters connected with his office and upon other particulars, and he answered logically on all subjects, and in fulfillment of the foregoing decree he sets this down on the said day, month and year.

Appraisement of the Office of Attorney.

In the city of New Orleans, on September 2, 1784, in the Office of the Royal Accountant of this city, were present: Messrs. Martin Navarro, Intendant General of this Province, Juan Ventura Morales, Acting Accountant of the Army, having the functions of Fiscal, assisted by Fernando Rodriguez, Escribano for the Government, and Estevan de Quiñones, Ecclesiastical Notary, appraisers named to place a valuation on the Office of Attorney that Francisco Broutin has exercised and renounced in favor of Antonio Mendez, and in consequence of their acceptations and oath to put a just price and valuation upon the said Office, they have unanimously agreed that owing to the small profits derived from the position because of a lack of judicial matters, they estimate and do estimate it at 500 pesos. With this the proceeding was concluded which Messrs. Rodriguez and Quiñones said they had made well and faithfully, without prejudice to the interests of His Majesty, and they signed with the above named Officials. (Signed) Martin Navarro, Juan Ventura Morales, Estevan de Quiñones and Fernando Rodriguez, before Rafael Perdomo.

Receipt for 2000 reales given to Antonio Mendez.

Jose Foucher, Principal Treasurer of the Army and Navy for the Province of Louisiana, etc.

Received from Antonio Mendez the sum of 2000 hard silver reales that I have placed in the Principal Treasury of the Army in my charge, as the one-half of the value at which the Office of Public Attorney was estimated, lately held and renounced by Francisco Broutin to him in a first renunciation, in accordance with the law for vendible and renunciable offices, as appears from the advice sent to me today from the Principal Accountant's Office, for this purpose. I have charged the said 2000 silver reales to the Branch for vendible and renunciable offices, in virtue of this receipt which Juan Ventura de Morales, Royal Official Accountant and Treasurer for the Branch of Trade and Friendship between the Inhabitants and the Indians, must record, and in the interim it has been deposited in the Office of the Principal Accountant of the Army with the approval of the Intendant General of the Royal Treasury. New Orleans, September 6, 1784. (Signed) Joseph Foucher.

The payment of 2000 reales has been recorded. (Signed) Juan Ventura Morales.

Approved. (Signed) Navarro.

Second Receipt.

Jose Foucher, Principal Treasurer of the Army and Navy of the Province of Louisiana, etc.

Received from Antonio Mendez the sum of one hundred and fifty-seven reales, eleven and one-third maravedis, in hard silver, which I have placed in the Principal Treasury of the Army in my charge, for the two and one-half per cent of the full amount of the import and export duties and eighteen for its conduction to Spain, that he has agreed to pay for the Office of Public Attorney, renounced by Francisco Broutin, appraised at five hundred pesos, according to official letter from the Principal Accountant's Office, dated this day. And concerning the one hundred and fifty-seven reales, eleven and one-half maravedis, in silver, I have charged this amount to the Branch for import and export duties, in virtue of this receipt, which Juan Ventura Morales, Royal Official Accountant and Treasurer for Trade between the Inhabitants and the Indians of this Province, must record, and in the interim it has been deposited in the Office of the Principal Accountant of the Army with the approval of the Intendant General. New Orleans, September 6, 1784. (Signed) Joseph Foucher.

157 reales 11 1/3 maravedis have been recorded. (Signed) Juan Ventura Morales.

Approved. (Signed) Navarro.

Antonio Mendez petitions to be admitted to practice before the Cabildo.

Antonio Mendez sets forth that he has instituted proceedings to be permitted to use and exercise the Office of Public Attorney, renounced in his favor by Francisco

Broutin. He has complied with all legal requirements, as may be proven from the receipts that duly accompany this petition, which show that he has placed in the Royal Treasury the full amounts to cover one-third of the Royal taxes and half annates to be sent to Spain. Therefore, may it please His Lordship to order the necessary title issued to him so that he may present himself, with it, before the Very Illustrious Cabildo to be received there and admitted to practice his profession. Esteban Miro, on Juan del Postigo's advice, rules: The receipts having been presented, a decision will be rendered later.

Decree.

Considering the merits resulting from the representation made by Antonio Mendez, let the Auditor of War, to whom this proceeding is entrusted, examine the said Mendez, making his aptitude and ability to exercise the Office of Attorney evident by certification which will be attached to this suit, then issue the necessary title, in the customary way, since he has been credited with the full payment already made to the Royal Treasury for the taxes belonging to His Majesty. And when what has been ordered has been done, let the Escribano give Mr. Mendez a certified copy of this entire case, so that within five years, counting from the issuance of the said title, he must apply for Royal Confirmation, with the understanding that the said time having passed, and the afore-mentioned confirmation not having been presented, this Government will declare the said Office vacant, according to His Majesty's decision. (Signed) Esteban Miro; Licenciado Postigo.

Juan del Postigo examines Antonio Mendez.

In the city of New Orleans, on September 17, 1784, Licenciado Juan del Postigo y Balderrama, Lawyer of the Royal Councils, Assessor General and Auditor of War of this said city, in virtue of the commission conferred upon him by the foregoing decree, to make an examination, caused Antonio Mendez to appear in his Office, where he was questioned before the present Escribano upon various subjects relative to the theory and practice of law required of a Procurador del Numero and of what concerns civil, criminal and executory causes, and also upon the terms that belong to each one and the petitions that should be presented to the Court when an appeal to them will have to be made. He answered categorically to all questions, therefore he must be considered capable and qualified to exercise the said office treated herein. And in fulfillment of the foregoing decision he sets the present down, which the Licenciado signed, as attested by the Escribano. (Signed) Juan del Postigo. Before Rafael Perdomo, Notary Public and Clerk of the Cabildo.

(To be continued.)